STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
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The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,
Plaintiffs,
vs. File No. C1-94-8565
Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,
Defendants.
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TRANSCRIPT OF PROCEEDINGS
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P R O C E E D I N G S.

THE CLERK: All rise, Ramsey County District Court is again in session, the Honorable Kenneth J. Fitzpatrick now presiding.

(Jury enters the courtroom.)

THE CLERK: Please be seated.

THE COURT: Good morning.

(Collective "Good morning.")

THE COURT: Counsel.

MR. CIRESI: Thank you, Your Honor. Good morning, ladies and gentlemen.

(Collective "Good morning.")

MR. CIRESI: Your Honor, first of all, I'd like to correct an exhibit number from yesterday. The last exhibit, which was the article by Drs. Kessler, Koop and Lundgren, I incorrectly stated that it was Exhibit 24346, it should be Exhibit 24376.

THE COURT: All right. The exhibit --

MR. CIRESI: Excuse me, it's the other way around. I said 24376 yesterday, it should be 24346. Thank you, Ms. Walburn.

THE COURT: Yes. I think the exhibit has already been remarked. It will show that.

MR. CIRESI: Thank you, Your Honor. Your Honor, the plaintiffs would call for

cross-examination an adverse witness pursuant to Rule 611(c), Mr. Andrew Schindler.

THE CLERK: Mr. Schindler, will you please

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rise.
(Witness sworn.)
THE CLERK: Please state your name and spell your last name.
THE WITNESS: Andrew J. Schindler, S-c-h-i-n-d-l-e-r.
THE CLERK: Thank you. Please have a seat.
THE COURT: Is that on?
THE REPORTER: Put your mike on, please.
THE WITNESS: Okay.
MR. CIRESI: All set?
THE WITNESS: Yup.

ANDREW J. SCHINDLER

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. CIRESI:

Q. Permit me to introduce myself, Mr. Schindler. My name is Mike Ciresi and I'm one of the lawyers representing the state of Minnesota and Blue Cross and Blue Shield.

A. Yes, sir.
Q. Sir, you are the present president and CEO of RJR Tobacco Company?
A. Yes, I am.
Q. Okay. And I'd like to visit with you a little bit about your history with RJR Tobacco.
A. Sure.
Q. You started with the company in 1974?
A. Yes, I did.
Q. And at that time you were performing a human resource function?
A. Yes, I was.
Q. And you held that position until approximately 1976.
A. Yes. And that first position was with R. J. Reynolds Industries or RJR Industries, which is the holding company.
Q. Okay. That would be the parent company --
A. Yes.
Q. -- of RJR Tobacco.
A. Right. It's RJR Nabisco today. Then it was RJR Industries.
Q. All right. Thank you.
And from 1976 to 1978 you were the national manager of sales personnel; correct?

A. Yes, in the tobacco company.
Q. All right. And you moved back to the tobacco company at that point.
A. That was my first job at the tobacco company.
Q. All right. And you held that position, I said, until 1978; correct?
A. Yes, that's correct.
Q. Then you went back to RJR Industries as manager

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of organizational development, and you held that position for approximately three months?
A. No, it was a year and three months.
Q. A year and three months.
A. Yes.
Q. In 1979, then, you went back to RJR Tobacco; correct?
A. That's correct.
Q. And you were director of organizational development there; correct?
A. Yes, sir.
Q. You held that position till 1981?
A. Till around October of 1981.
Q. Then you became plant manager of an RJR tobacco plant in Winston-Salem, North Carolina?
A. Yes, sir.
Q. And you held that position till approximately

1986?
A. Yes, till end of 1986.
Q. You then became a Nabisco director of manufacturing; correct?
A. That's correct.
Q. Would that be back with the parent company then?
A. No, that was with Nabisco Foods, the food subsidiary of RJR Nabisco.
Q. All right. So RJR Nabisco has a food operation in addition to a tobacco operation; correct?
A. Yes.
Q. So in 1981 -- excuse me, 1986, you became a director of manufacturing in the food division.
A. Well it was --
I started work there in January of 1987.
Q. And you held that position until sometime in 1988?
A. Yes. In October of 1988 I returned to the tobacco company as the vice-president of personnel.
Q. And you held that position as vice-president of personnel until approximately July of 1989 when you became senior vice-president of manufacturing, engineering and quality assurance?
A. Yes, that's correct.
Q. You held that position until approximately 1994;

correct?
A. Yes, but what --
During that period from July of 1989 till May or June of '94, I picked up additional responsibilities in the operations side. Our packaging division, our tobacco processing, our distribution functions became added to the ones you just listed, and I became the executive VP of operations.
Q. Okay. So that was --
A. It was during that period.
Q. During that five-year period.
A. Five-year period, yes, sir.
Q. And by saying that you were in charge of those

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operations, you had people reporting to you during that period of time regarding those specific functions you just described?
A. Yes. Yes, sir.
Q. And then in June of 1994 you became the president and chief operating officer of RJR Tobacco Company; correct?
A. Yes. Yes, sir.
Q. And then finally in July of 1995 you assumed the position of chief executive officer of RJR Tobacco Company.
A. Yes, sir.

Q. And you continued as president of the company; correct?
A. Yes, sir.
Q. And do you hold those two positions today, sir?
A. Yes, sir.
Q. Now as the president and CEO, you have full responsibility for domestic tobacco operations; right?
A. Yes, I do.
Q. And you report to Steven Goldstone, who is the CEO of RJR Nabisco; correct?
A. Yes, sir.
Q. You're a direct report to him; correct?
A. Yes, sir.
Q. And one of your core responsibilities is to ensure the short- and long-term profitability of RJR Tabasco -- Tobacco Company; correct?
A. That is certainly one of my responsibilities.
Q. Now you also have duties to customers; correct?
A. I have duties to customers, to employees, to people in the community where we operate,. --
Q. You have --
A. -- and the shareholders.
Q. You also have duties to shareholders; correct, sir?

A. Yes, sir.
Q. And you have duties to the public health; correct?
A. Yes, I do.
Q. And would you agree that you can't place profit above the public health?
A. I would agree with that, yes, sir.
Q. Health is your paramount responsibility; is it not?
A. I have a paramount personal responsibility on the health-related act -- you know, to the product with customers, I have paramount responsibility to employees that work in our plants and so forth with regard to safety and health in the work environment, and I think -- believe likewise with the community that we operate in, to assure that we operate our manufacturing facilities in a way that we comply with environmental laws and all of those issues so that we

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don't put somebody at risk in the community. I think all of those issues related to health and safety with those different constituencies are relevant.
Q. And you would agree that the obligation and duty of public health is your paramount responsibility as the CEO and president of RJR Tobacco Company.
A. I -- I believe with this product, and we're

talking about cigarettes here, given the risk of the product, that it is a paramount responsibility.
Q. It is the paramount responsibility; is it not, sir?
A. I would say it is the paramount responsibility. However, I would like to add to that, Mr. Ciresi, that I feel a similar paramount responsibility for the safety and health of our employees, and, as I said before, people in the community in terms of how we comply with environmental laws. So I feel a -- a responsibility for health-related and safety-related issues for those three constituencies in the course of doing my job.
Q. Fair enough. Fair enough. You have a paramount responsibility to protect the public health, whether it's your employees, your customers, or the community at large; correct?
A. Yes, sir.
Q. And you understand that duty; don't you?
A. Yes, sir.
Q. And you have a duty to tell your consumers all that you know about the dangers of your product; do you not?
A. I believe that I have a personal duty, personal responsibility to be sure that people that use our

products are aware of the risk, are knowledgeable of the risk of those products.
Q. Sir, my question was a little different. My question is this: You understand you have a duty to tell the public all that you know about the dangers of your product; correct? And by "you," I mean RJR Nabisco.
A. I -- I believe that I have a duty or a personal duty and responsibility to be sure, to assure the people that use our products are aware of those risks. And that they are aware of those risks, I believe people are aware of the risks of this product.
Q. But sir, that wasn't my question.
A. Well I'm --
Q. Let me --
A. -- not following you.
Q. Let me restate it for you. You have a duty and responsibility to let the public know everything that your company knows about the dangers of the product; correct?
A. Well, I believe I have a responsibility to ensure that people are aware of the risks of the

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product when used -- and if there's something we know about the product --

When you say "everything that we know," I think everything that we know that has a material impact on people's understanding of the risk of this product. I mean if the --

In conducting my responsibilities as the CEO, I would not want to be selling a product that had risk, that people were not aware that this product had risk, and I --

Q. You wouldn't want --

A. -- feel it's a responsibility to make them aware of those risks or to be sure they are aware of those risks.

Q. You wouldn't want to withhold information that the company itself knew about the dangers of the product; would you?

A. I wouldn't want to withhold --

I wouldn't withhold information that had a material impact on people's understanding of the risk of the product.

Q. The company should not withhold information that it knows about the dangers of its product; correct?

A. I don't think the company should withhold information about the risk of a product that is material to people's understanding of the risk of the product.

Q. And if the company did that over 40 years, then it wouldn't have discharged its duty to the public; correct?

A. If the company withheld information from the public over, you know, this 40-year period that you're referring to, that was material to people's understanding of the risk of cigarette smoking, then I would say they had not met their duty, or somebody didn't meet their duty.

Q. Well do you know if RJR over 40 years asked people, "What's material in your mind?" You keep using the word "material." Did R -- RJR ever make that inquiry through a survey of its customers?

A. Not that I know of.

Q. So it would be fair to state that the company, if it is aware of dangers, it has to get that information out because consumers may not know; isn't that right?

A. I think consumers of cigarette products, I think everybody in America recognizes that cigarettes are -- have significant health risk associated with them.

Q. That wasn't my question, sir.

A. Well then I'm sorry. I don't know what you're saying.

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MR. CIRESI: We'll have the question read back. Can I ask to have the question read back, please.

(Record read by the court reporter.)

A. I -- I believe the company should ensure -- I mean I think it's my responsibility to ensure that people are aware of the risk of this product.

Q. And --

A. And --

Q. Go ahead, sir.

A. And -- well, I mean that's -- that's how I feel. I mean that's my personal responsibility of working in this business. It's an ethical responsibility.

Q. And the company has the ethical responsibility to get out what it knows about the dangers of its product when it knows it; correct?

A. What do you mean by "dangers?" I mean everybody knows that cigarettes have health risk. I --

Are you talking about something specific? I mean --

Q. Dangers that the company knows about the product. You don't understand "dangers," the term?

A. Well --

Q. Because if you don't, we can start breaking it down, if you don't, sir.

A. Well I understand "dangers." Cigarettes are viewed and understood to be risky, to be dangerous, to have health risks in our -- you know, in everyone's mind, in my mind, in smokers' minds, the public health people.

Q. When the company --

A. So I -- if people -- my view is that, if I could give you an example --

Q. No, I just want to know if you can answer my question. Okay?

A. The company has a responsibility, I have a responsibility to ensure that people understand that this product is risky.

Q. Did the company --

A. So --

Q. -- have that responsibility in 1954?

A. Well I would -- you know, I wasn't --

You know, I was 10 years old in 1954. If -- if people felt the product was risky, I think people in 1954 -- I'm judging this from 43 years later -- would have had the responsibility to ensure that people were aware, if they knew that or believed it, were aware that the product was risky.

Q. Does that mean yes?

A. Yeah.

Q. Thank you.

Does the company have a duty not to make false statements regarding its product?

A. Sure. I think a company should not make false

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statements about its product. I wouldn't --
I have that responsibility not to make false statements.
Q. Does the company have a duty not to make false promises regarding its product?
A. Yes, we should not make --
I should not make or allow to be made false promises or claims about our products.
Q. And the company has that duty; correct, sir?
A. Yes, the company has that responsibility.
Q. Does the company have a duty not to make misrepresentations regarding its product?
A. Yes.
Q. Does the company have a duty not to make misleading statements regarding its product?
MR. WEBER: Objection, Your Honor, it's one of the things he asked just a moment ago. Asked and answered.
THE COURT: No, you may answer that.
THE WITNESS: I'm sorry, am I supposed to answer?

THE COURT: Yes.
THE WITNESS: All right.
THE COURT: You may answer.
A. Could you repeat the question?
Q. Sure.
Does the company have a duty not to make misleading statements about its product?
A. The company has a duty not to make misleading statements about its product.
Q. Does the company have a duty not to engage in deceptive practices regarding its product?
A. Yes, I believe the company has a duty not to engage in deceptive practices about the product.
Q. And do you know if RJR over the years has made statements about its products, and specifically cigarettes?
A. Over the years, made statements about the -- about cigarettes?
Q. Yes.
A. Well there's --
Yeah, of course it has. I mean it has made statements about its cigarettes over the years, yes.
Q. Has it issued press releases regarding its cigarettes?
A. Yes.

Q. Has it issued advertisements regarding its cigarettes?
A. Yes, sir.
Q. Has it intended people to rely on those statements that it's made to the public?
A. Yes, sir.
Q. Can you direct your attention, sir, to Exhibit 20156. And there's two volumes to your right there, Mr. Schindler, and that would be in volume two.

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A. That's 20156.
Q. 20156, correct.
A. Sure, uh-huh.
Q. Do you have it, sir?
A. Yes, sir.
Q. And that's the RJR Nabisco annual report for 1996?
A. Yes, sir.
MR. CIRESI: Your Honor, we would offer Exhibit 20156.
MR. WEBER: No objection, Your Honor.
THE COURT: Court will receive 20156.
(Discussion off the record.)
BY MR. CIRESI:
Q. Do you have it, sir?
A. I'm on 20156, the RJR Nabisco annual report.

Q. All right. Can you direct your attention, then, to page one of that report. It's entitled "Company Descriptions."
A. Yes, sir.
Q. Now in 1996 RJR was the second largest tobacco company in the United States, manufacturing one of every four cigarettes sold in the domestic market?
A. Yes, sir.
Q. Does that position hold today?
A. Yes, sir.
Q. Is the 1997 annual report completed yet, sir?
A. It wasn't as far as I know as I left last week, or -- yeah. Last Friday it wasn't, I don't believe. It's close to being produced, but --
Q. And you've been here since Monday?
A. No, since Sunday.
Q. Sunday. All right.
Did you have an opportunity to watch Mr. Bible's testimony?
A. I watched about the first 15 minutes or so to just get a feel for what the courtroom looked like and what you looked like, Mr. Ciresi. You know, that was it.
Q. Okay.
A. It was about 15 or 20 minutes.

Q. Did you watch it by video at any other time?
A. It was -- it was on video, --
Q. Ah.
A. -- that 15 or 20 minutes in the office downstairs.
Q. All right. Now sir, can you direct your attention to the second page of the annual report.
A. Yes, sir.
Q. And in 1996, the sales of RJR Nabisco were approximately 17 billion dollars?
A. Yes, sir.
Q. Did that increase in 1997?
A. It --
Just a little bit, if at all. We're still

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essentially in that 17-billion-dollar range.
Q. Okay. And the tobacco sales in that year were eight billion one hundred seventy-four million; right?
A. Yes. That's total international and domestic.
Q. And the operating income for RJR Nabisco was two billion two hundred fifty-two million; correct?
A. Yes, sir.
Q. And of that operating income, approximately 82 percent, or one billion eight hundred forty-five million came from tobacco; right?

A. Yes, from the combined worldwide tobacco operations.
Q. Did the tobacco operating income increase in 1997?
A. Yes, it did.
Q. Do you know what it increased to in 1997?
A. Ah --
Q. And I'm not asking you for an exact amount, but approximately, sir.
A. Well, you know, to tell you the truth, I'm not sure that the operating income increased. Our -- I typically deal with a term we call -- the one above it, operate company contribution. The domestic company's operating company contribution increased in 1997 from one billion four hundred fifty million in 1996 to one billion five hundred ten million in 1997. Because this is a combined tobacco operations, I am not sure about what happened to the international business's operating income in this context. Okay?
Q. Fair -- fair enough.
A. But I can get that for you, but I just --
Q. That's all right.
A. I don't like ad libbing off the top of my head on these things.
Q. In 1996, then, of the 1.8 billion in operating

income, I think you just said, --
A. Yes.
Q. -- 1.456 of that operating income --
A. No, now we're back to operating income. Of the -- there is a difference. I was talking about the above line. I don't mean to make this complicated, but the above section was operating company contribution. Okay. Of the 1.845 billion in operating income, the domestic company's share of that is about a billion -- billion eighty-four million, something like that.
Q. Okay.
A. Yeah.
Q. Let me see, then, if we have this straight. With regard to the operating company contribution of the 2.253 billion in 1996, 1.456 billion --
A. Yeah, five --
Q. Sir, let me finish. All right?
A. I'm sorry.

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Q. The 1.456 billion came from the domestic tobacco company; correct?
A. Yes.
Q. Okay. And of the operating income of one billion eight hundred forty-five million in 1996, approximately one billion eighty-four million --

A. Yes.
Q. -- came from the domestic operations?
A. Yes, sir.
Q. And your income is in part tied to the operation of the domestic company; correct?
A. Yes, sir.
Q. Now in --
At the end of 1996, RJR Nabisco had approximately 31,289,000,000 in assets; correct?
A. Yes, sir.
Q. Now sir, you are familiar with the Frank Statement; are you not?
A. Yes, sir.
Q. And the first time you became aware of that was in the summer of 1997.
A. No, no, it was -- it would have been somewhere in the summer or early fall of '96.
Q. '96?
A. Yes, sir.
Q. What occasioned your knowledge of the Frank Statement?
A. Well I began to become involved in the -- in the litigation, and in the -- that process I -- that's when I became aware of the Frank Statement.
Q. Do you know who brought it to your attention?

A. It was, you know, with -- with my lawyers.
Q. If you could go to Exhibit 14145, sir.
A. Yes, sir.
Q. That is the Frank Statement; correct?
A. Yes, it is.
Q. Now does RJR Tobacco Company have a mission statement?
A. We have a -- a strategy statement. I'm not --
You know, our business strategy we define as to be a strong number two. I'm not -- in the context of "mission statement," I'm not sure what you mean.
Q. By a strong number two, you mean you want to be a strong number two in your various business segments; correct?
A. Well in our domestic tobacco business.
Q. Now I'm talking about a mission statement, what principles that the company stands for. Is there any such mission statement?
A. I -- I have not instituted a mission statement in the context that you are discussing, and I -- you know, I don't --
Q. Was there a mission statement in existence when you took over as CEO of the company?
A. I don't remember one --

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Q. Okay.

A. -- at the time.
Q. After you took over and you became aware of the Frank Statement, did you issue a mission statement incorporating the principles of the Frank Statement?
A. No, I didn't.
Q. Now you understand that RJR in 1954 made representations to the public through the Frank Statement; don't you?
A. Yes, sir.
Q. And one of those representations is that the company accepted an interest in people's health as a basic responsibility, paramount to every other consideration in its business; correct?
A. Yes, sir.
Q. It also told the public that it believed that the products it made were not injurious to the health; correct?
A. Yes, sir. That's what the Frank Statement says.
Q. That was a representation to the public; correct?
A. I believe so. I mean that's what they said in the Frank Statement.
Q. And have you become aware, during the course of your tenure as president and after you became aware of the Frank Statement, that this was published

throughout the United States?
A. Yes. As I became aware of this, it's my understanding that it, as I recall, ran in something like 188 cities or around the United States for a day or so back in 1954.
Q. And in that Frank Statement RJR also represented to the public that it always has and always will cooperate closely with those whose task it is to safeguard the public health; correct?
A. I -- I assume that's right. You're reading this and it sounds like what I remember, but I'm not reading along with you.
Q. I'm sorry, sir. If you look to the first column and you look right at the end of the first column.
A. Okay. Yes, sir. I've got it.
Q. "We always have and always will cooperate closely with those whose task it is to safeguard the public health." Do you see that?
A. Yes, sir.
Q. Okay.
A. That's what it says.
Q. And you understood that representation was made in 1954; correct?
A. Yes, sir.
Q. Now RJR Tobacco Company or RJR Nabisco has never

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revoked these representations; have they?
A. No, sir, not that I know of.
Q. You've never seen any printed publication prepared and distributed by RJR which said we revoke the Frank Statement.
A. No, sir.
Q. These --
A. I've never seen that.
Q. These duties and representations to the public remain right up to today; don't they, sir?
A. Yes. This statement's never been revoked, so this --
No. As -- as you already asked me, this statement has never been revoked.
Q. Now sir, can you direct your attention to Exhibit 18 -- excuse me, 13334.
MR. CIRESI: And maybe we'll take a short recess, Your Honor?
THE COURT: We'll take a short recess.
THE CLERK: Court stands in recess.
(Recess taken.)
THE CLERK: All rise. Court is again in session.
(Jury enters the courtroom.)
THE CLERK: Please be seated.

THE COURT: Mr. Ciresi, if I may give a constructive suggestion, you are dropping your voice once in a while, and particularly when you speak in terms of millions versus billions, and it may make a difference, so it's been suggested that that be enunciated clearly.
MR. CIRESI: I will do that, Your Honor. I'm sorry.
THE COURT: Thank you.
MR. CIRESI: I apologize to the jury.
BY MR. CIRESI:
Q. Mr. Schindler, can you direct your attention to Exhibit 12464.
A. Oh, I'm sorry, I'm --
Q. It would be in volume one, sir. I'm sorry. I should have told you that.
A. I'm in the wrong book.
12464.
Q. Correct.
Now sir, you would agree that RJR should not be marketing to youth; correct?
A. Absolutely. We don't market to youth.
Q. Has an absolute duty not to market to youth; correct?
A. Yes, sir.

Q. Board of directors shouldn't be talking about marketing to youth; correct?
A. I don't believe so. I mean we should --
We do not market to youth. I've been with this company almost 24 years. I've never seen a marketing

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process or plan directed at under-age smokers.
Q. You've been with the company since 1974; correct?
A. Yes, sir.
Q. When in 1974?
A. May of '74.
Q. So that during that period of time, the board of directors certainly should not be talking about marketing to youth; correct?
A. Since all of my experience with this company and its policy not to market to youth, it would seem to me, by my judgment sitting here today, or looking at anything related to youth marketing was not a right thing to do. I sure wouldn't be talking to our board of directors about marketing cigarettes to under-age smokers or analyzing under-age smokers because the policy of the company, rigorously followed and enforced, is not to do that, and it's been that way since I've been with this company.
Q. And that's May of 1974; correct?

A. Yes, sir.
Q. And that should have been the policy of the company all the way back to 1954; correct?
A. What policy are you -- are you referring to, sir?
Q. Not to market to youth.
A. That was the policy of the company in -- I'm sorry. Did you say back to '54?
Q. Correct.
A. Well my experiences with the company, from '74 forward, in my almost 24 years with the company I never heard anybody talking about marketing plans directed at under-age smokers or marketing to under-age.
Q. Can you answer my question?
A. I don't know what's going on in 1954. To me, you wouldn't -- as far back as you want to go, you shouldn't be marketing cigarettes to people that are 14 years old, or youth, because of the risks of the product.
Q. So the answer is yes, then; correct?
A. Yes.
Q. Thank you.
Now can you direct your attention to Exhibit 13334.

Excuse me. I'm sorry. It's 12464. You have that in front of you, sir.
A. Oh, yes, sir.
Q. Now that's an RJR interoffice memorandum; correct?
A. Yes, sir.
Q. And that's --
The subject of that document is "CIGARETTE CONCEPT TO ASSURE RJR A LARGER SEGMENT OF THE YOUTH MARKET." Correct?

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A. Yes, sir.
Q. From Frank C. Colby, a senior scientist; correct?
A. Yes, sir. That's what it says.
Q. To R. A. Blevins, Jr., director of marketing and planning; correct?
A. Yes, sir.
Q. High people in the company; correct?
A. I -- I don't know where they rank in the company when you say "high people." These were not senior executives, if that's what you're implying.
Q. Well one is --
A. They weren't vice-presidents. They weren't reporting to the CEOs, to my knowledge.
Q. Well they were a --

For example, Mr. Colby, a senior scientist; correct?
A. Yes. I -- that's my understanding.
Q. And Mr. Blevins was the director of marketing and planning; correct?
A. Yes.
Q. And he would report up through the chain all the way to the board of directors; correct?
A. Well I'm not sure I understand that.
Q. Well --
A. He didn't report to the board of directors. He reported to somebody who probably reported to somebody who reported to the operating head of the domestic tobacco company who reported to somebody in the RJR Industries. So if -- if Mr. Blevins reported to the board of directors on that concept, I suppose everybody in the company reports to the board of directors.
Q. Well they do; don't they, sir?
A. I -- I've never really thought about it that way.
Q. Well the board gets its information from the company coming up from the bottom with regard to what's going on in the operating units.
A. Well yes, sir.

Q. Okay. And if there's a number of levels of management, they get information from the people down below them that are gathering the information and operating certain departments; correct?
A. Information does come up from inside the organization.
Q. And it goes to the next level, and then if somebody above that requested it, it goes up to that level; correct?
A. Yes, sir.
Q. Sort of like the chain of command in the military, isn't it, sir?
A. I'm very familiar with the chain of command in the military.
Q. I know you are. You served our country; did you

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not?
A. Served in Viet Nam.
Q. Yes?
A. Four years in the Army.
Q. So you are familiar with the chain of command; are you not?
A. Yes, sir.
Q. And it goes right to the top; doesn't it, sir?
A. Yes, sir.
Q. And in the case of the military, it goes to the

President of the United States; does it not?
A. Yes, sir.
Q. And ultimately the top is responsible; isn't that right, sir?
A. Yes, sir.
Q. Now if you look at Exhibit 12464, do you see that Dr. Colby makes the following statement in the summary. "It is suggested to develop a new RJR youth appeal brand based upon the concept of going back -- at least halfway -- to the technological design of the Winston and other filter cigarettes of the 1950's." Do you see that?
A. Yes, sir.
Q. Do you know what he meant by "a youth appeal brand?"
A. No, sir.
Q. And if you look down, about halfway down, Mr. Schindler, you'll see that Dr. Colby starts talking about what he means by going back halfway. Do you see that? "My suggested -- My suggestion covers all these conditions?"
A. Yes, sir, I see that.
Q. Okay. "It is basically to go back as much as possible - probably at least halfway - towards the old filter cigarettes, the cigarettes of the fifties

prior to the Surgeon General's report. These cigarettes had the following three main characteristics as distinguished from today's cigarettes." Do you see that?
A. Yes, sir.
Q. And then he talks about they delivered more flavor, and he puts in parens "tar;" correct?
A. Yes, sir.
Q. Okay. Flavor comes from tar; correct?
A. Yes, sir.
Q. And then he says, "They delivered more 'enjoyment' or 'kicks' (nicotine)," do you see that?
A. That's what he says.
Q. And the kicks come from nicotine; correct?
A. That's what he says.
Q. Do you deny that?
A. I've never used the term "kicks."
Q. Do you deny it?
A. Deny what, sir?
Q. That the kick comes from nicotine in the

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cigarette.
A. I -- I'm not sure --
I'm a smoker and I don't know what you mean by "kick."
Q. All right. So you have no idea what that means.

A. Well he's -- he's using a slang expression here to define nicotine. You're asking me if I, I guess, if -- if I believe that cigarettes are all about kick. He refers to tar as flavor. Nicotine is part of the flavor package in a cigarette. And I smoke cigarettes all the time and I'm not sure what we're talking about here with kick.
Q. So you don't --
A. I don't know what Dr. Colby means.
Q. All right. Fair enough. You just don't know what that means; is that right?
A. I don't know what Dr. Colby means in this document.
Q. See down at the bottom he also states, "Still, with an old style filter, any desired additional nicotine 'kick' could be easily obtained through pH regulation?" Do you see that?
A. No. You lost me.
Q. Last paragraph.
A. Okay. "In my judgment...," in that paragraph?
Q. That paragraph, last sentence.
A. Okay. Oh, yes, sir, I got it.
Q. Do you know what he was talking about there?
A. Well I think what he's talking about is that cigarettes back in the fifties had more -- and this

whole thing had more tar and nicotine than the cigarettes that were being made in the seventies.
Q. Do you know what he's talking about in the last sentence where he says, "Still, with an old style filter, any desired additional nicotine 'kick' could be easily obtained through pH regulation?"
A. It is -- well what I've learned through --
You're talking about the pH piece, which I didn't frankly see in the first reading. Is --
What I've learned through these documents as I became involved in this -- in this litigation, something I hadn't known of before, the people back in this time -- I guess Dr. Colby had some theory that you could increase nicotine delivery through the use of ammonia affecting pH. Is that what you're talking about?
Q. Well I wasn't talking about nicotine delivery. Do you know what nicotine delivery is as opposed to the form of nicotine? If you do, tell me. If you don't, just say I don't know.
A. Well my understanding of nicotine delivery is -- or is what you absorb in your -- in your body when you take a drag on a cigarette.
Q. Okay. So that's your understanding of nicotine delivery; is that right, sir, what you absorb in your

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body?
A. Well what -- yeah.
Q. Do you have any understanding whether the form of the nicotine plays any role in the amount absorbed in your body, even though delivery may be the same?
A. We're going to get to the limits of my scientific knowledge here real quick, but I understand in the -- in nicotine, there's something called bound nicotine and something called free nicotine.
Q. Okay. Is that the extent?
A. Well, it's getting close.
Q. All right. But you do know the terms "bound" and "free" nicotine.
A. Yeah, I've learned those terms as I became exposed to these documents over the last -- well really since the fall of last year.
Q. Now if you go to the next page of this document, "To summarize, it should be easy to develop, within a relatively few weeks, these new youth-appeal cigarettes for market testing for which the following advertising claims could be unequivocally proven: They will deliver more flavor, more enjoyment, and more puffs for the money than any large selling cigarette on the market, or for that matter, than any

other cigarette now on the market." Do you see that?
A. Yes, sir.
Q. Do you know if RJR altered the nicotine in its product and went after the youth market?
A. To my knowledge, we have never altered the nicotine in the product and gone after the youth market. I've been with this company 24 years, have worked in sales, have worked in manufacturing, been the CEO -- president/CEO for almost four years, I have never even heard anybody talking about proposing marketing processes or plans to get to the youth market. And -- and altering nicotine for that purpose, I've never heard of such a thing until I started seeing these documents.
Q. Oh. Have you looked at the documents?
A. Have I looked at the documents?
Q. Yes.
A. I have seen certainly some of these documents in the course of my deposition for this case with Mr. O'Fallon, and in the course of preparation for this testimony.
Q. Did you review documents since you arrived on Sunday?
A. Yes, sir.
Q. Okay. Can you direct your attention, then, to

Exhibit 12493, which is the next exhibit in your

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book. This is a presentation to the board of directors, sir, --
A. Yes, sir.
Q. -- on September 30th, 1994.
A. '74.
Q. '74, excuse me.
You were with the company at that time approximately, what, four months?
A. Yeah, about four months.
Q. Have you seen this document before?
A. Yes, I have.
Q. Can you direct your attention to the page which has "1975 MARKETING PLANS PRESENTATION, HILTON HEAD, September 30, 1974." Do you see that?
A. Yes, sir.
Q. "Objective in 1975." That's chart one; correct?
A. Yes, sir.
Q. And what this is is a presentation that was made to RJR's board of directors at Hilton Head Island in September of 1974; correct?
A. That's my understanding.
Q. And chart one for the objective in 1975 says, "Our paramount marketing objective in 1975 and ensuing years is to re-establish RJR's share of

marketing growth in the domestic cigarette industry." Correct?
A. Yes, sir, that's what it says.
Q. At that point in time RJR's share of the domestic cigarette industry was diminishing; correct?
A. Going back in time here. I think --
I'm not sure that it was diminishing. RJR was still at that time the number one tobacco company in terms of share. I believe the share was flat. I don't know at that point it was diminishing in total. I think it was basically flat, as I recall.
Q. Okay. It was flat and RJR was not capturing a greater share of the market; is that a fair statement?
A. It wasn't growing and, for example, Philip Morris was.
Q. Yes. Philip Morris was, with its Marlboro brand; correct?
A. Certainly Marlboro, and I believe perhaps some other brands at this point. But certainly Marlboro.
Q. Certainly Marlboro was the engine or the fuel to the growth of Philip Morris. You know that as a cigarette person; don't you?
A. Sure. It's a great brand.
Q. And at the board of directors meeting, chart two

showed opportunity areas; correct?
A. Yes, sir.
Q. And the board of directors was told that RJR was going to speak to four key opportunity areas to accomplish growth in the domestic cigarette industry; correct?

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A. Yes, sir.
Q. And the number one opportunity area was to increase our young adult franchise; correct?
A. That's what it says.
Q. And they defined young adult; correct?
A. Are you talking about in the paragraph below, 14 to 24?
Q. Yes, I am.
A. Yes.
Q. "First, let's look at the growing importance of the young adult in the cigarette market. In 1960 this young adult market, the 14-to-24 age group, represented 21 percent of the population." Do you see that?
A. Yes, sir.
Q. And it was being reported to the board that this age group was growing -- of growing importance; correct?
A. Yes, sir.

Q. And these are all -- strike that.
There are a number of age groups here below the age of 18; aren't there, sir?
A. Yes, sir.
Q. You'd agree that a youth is 14 years old; wouldn't you?
A. Yes, sir.
Q. Fifteen years old?
A. Yes, sir.
Q. Sixteen years old?
A. Yes, sir.
Q. Seventeen years old?
A. Yes, sir.
Q. Eighteen years old?
A. Eighteen? You can go in the Army and fight in Iraq; I don't call you a youth.
Q. He's not a youth at that point.
A. I think you're a young adult. You're old enough to buy the product by the laws today at 18, you're old enough to go in the military. You -- you're not 14 when you're 18.
Q. Okay. And you're not 17 and eleven months when you're 18; correct?
A. Well that's true.
Q. And do you think 18-year-olds influence

17-year-olds?
A. I imagine they do.
Q. Do you think 19-year-olds influence 17-year-olds?
A. I imagine they might, yes.
Q. They're called peers; aren't they?
A. You -- you could call them peers. I mean --
Q. Now in this report, chart three says "Young Population Skew." Do you see that?
A. Yes, sir.
Q. "As seen by this chart, they will represent 27

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percent of the population in 1975. They represent tomorrow's cigarette business. As this" --
A. Yes, sir. Yes, sir.
Q. "As this 14-to-24 age group matures, they will account for a key share of the total cigarette volume -- for at least the next 25 years." Correct?
A. That's what it says.
Q. So that would take us up to 1999, or next year; correct, sir?
A. Yes, sir.
Q. And at that point those 14- to 24-year-olds would be, what, 39 to 49 years old next year?
A. Yes, sir.
Q. And what's being discussed here with the board

is that if you get people when they're young, they develop brand loyalty by and large; don't they, sir?
A. I don't --
I wasn't at the board meeting. I see this outline. I don't know what they discussed at this board meeting. If you want to know what they discussed at this board meeting, I think you should probably be talking to somebody that was there.
Q. Well if we had to take every person that wrote all the memos and all the board members, sir, we'd be here for two years.
MR. WEBER: Let me object to the commentary of counsel, Your Honor. It's not a question.
THE COURT: The objection is sustained.
BY MR. CIRESI:
Q. How many board members were there?
A. Back then?
Q. Yes.
A. I have no idea.
Q. How many employees of the company were there?
A. Oh, back in '74, I don't know, probably 16 thousand or so. I'm guessing. I was only with the company four months at this point in time.
Q. How many of those individuals that were there wrote memos and received memos that we've seen in

this case, if you know?
A. I have no idea.
Q. Do you know how long it would take to try this lawsuit if we didn't take in the top people in the companies and had to bring in every employee who wrote every document?
MR. WEBER: Objection, Your Honor, it's argumentative and irrelevant.
THE COURT: No, you may answer that.
THE WITNESS: I should answer?
A. I have no idea how long it would take.
Q. Long time; wouldn't it, sir?
A. I think it would take a long time.
Q. And you are the chief executive officer of this company and responsible for it; aren't you?
A. Yes, sir.

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Q. Can you go on to the next page.
And you do acknowledge that, from this document, board members were discussing 14- to 24-year-olds; don't you, sir?
A. If this was presented to the board, then they -- and they saw -- and these were slides, I would assume they saw this. But I don't know what was presented to this board. If this actually was presented, then they saw 14 to 24 being discussed.

Q. That would be wrong.
A. In my opinion.
Q. It would be a violation of their duty to the public; correct?
A. I don't know if you mean "duty" in a legal sense, but -- I don't know about that, but I think if you have a policy which this company has always had not to market cigarettes to people that are 14 and 15 and under the legal age, so forth, then you shouldn't be discussing 14-year-olds in any way.
Q. Shouldn't be discussing marketing plans for 14- to 24-year-olds; should you?
A. Well I haven't seen a marketing plan here.
Q. I just asked you the question. Should you be marketing -- discussing marketing plans?
A. No, absolutely not.
Q. That would be a violation of the corporation's duty; wouldn't it?
A. It's -- the company --
People shouldn't be discussing, in my opinion -- certainly doesn't happen today, it hasn't happened in the 10 years of being at the executive level, or I've never seen it in my 20 some years -- they shouldn't be discussing cigarettes and 14-year-olds in any way, shape or form relative to

marketing, in my opinion.
Q. Shouldn't be selling to 14- to 24-year-olds; correct?
A. We market cigarettes. We don't own retail outlets. I do not believe cigarettes should be sold to people under the legal age to buy the product. Absolutely I don't believe that they should be sold.
Q. Company shouldn't have marketing plans that are directed to those people; correct?
A. We don't have marketing plans directed to people under the legal age to buy the product.
Q. Well let's see what the documents show, sir.
We go on to page two, chart four, "PM & B&W Share By Age." Do you see that?
A. Yes, sir.
Q. That would be Philip Morris and Brown & Williamson; correct?
A. I hate to do -- where --
What page are you on? You're on chart four; right?
Q. I am indeed.

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A. Okay. I was already over in the paragraph; you were reading the -- under the chart four. All right. B&W -- "PM & B&W Share By Age."
Q. That would refer to Philip Morris and Brown &

Williamson; correct?
A. Yes. Yes, sir.
Q. Now the text reads as follows: "Both Philip Morris and Brown & Williamson, and particularly their fast growing major brands, Marlboro and Kool, have shown unusual strength among these younger smokers. In the 14-to-24 year age category, Philip Morris has a 38 percent share and Brown & Williamson a 21 percent share. Both companies have significantly lower shares in the remaining age categories."
Now have I read that correctly, sir?
A. Yes, sir.
Q. Now what is being reported here to the board is an analysis that was conducted by RJR people with regard to the age segment 14 to 24; correct?
A. Yes, sir.
Q. In the next paragraph, "With strong young adult franchises" --
And that was defined as 14 to 24; correct?
A. Yes, sir.
Q. -- "and high cigarette brand loyalties, this suggests continued growth for Philip Morris and B&W as their smokers mature." Do you see that?
A. Yes, sir.
Q. And what's being referred to there is brand

loyalty; correct, sir?
A. Yes, sir.
Q. And you're familiar with the concept of brand loyalty; aren't you?
A. Yes, sir.
Q. RJR attempts to get brand loyalty in its smokers; doesn't it?
A. Yes. Everybody that sells a product attempts to get brand loyalty.
Q. And the younger you get them to be loyal to your brand, the more probable that they will remain loyal over a period of time; correct?
A. There's a theory if you can get somebody from 18 to 24 to, you know, adopt your brand, become as we would call a franchise smoker, that they would -- it would be more likely that they will be smoking the brand when they're, you know, 30 or 31.
Q. And you call those people franchise smokers; correct?
A. It's a term that's used to describe people that claim your brand as their usual brand.
Q. And if you get them early -- and let's just use your age of 18. If on that magical day that they turn 18 you get them and keep them, that produces a tremendous amount of sales over the lifetime of that

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smoker; correct?
A. Produce sales for whatever product they smoked as long as they chose to be smokers.
Q. And RJR looks at those types of projections, getting people early -- and use your magical date of age 18 -- and keeping them over a long period of time to project out the types of revenues you can expect.
MR. WEBER: Object to the argumentative nature of "magical date of 18," Your Honor. It's not proper in a question.
THE COURT: Oh, you may answer that.
A. I have never seen an analysis or projection that you are referring to here.
Q. But you would agree, even though you've never seen such an analysis, that it is important to the company to get franchise smokers; correct, sir?
A. Sure, the -- I mean that -- that applies to McDonald's, that applies to my product that is sold to the public. The more loyal somebody is to your particular brand, the stronger your brand is.
Q. All right. Now let's see what else the board was discussing.
By the way, with regard --
MR. WEBER: Object to counsel's -- let me object to counsel's commentary, Your Honor. It

should just be questions.
THE COURT: Well I think he's just introducing the next question. I don't -- I think it's fair.
Q. Sir, can you go to chart five, which is the next chart that was put up for the board for discussion.
A. Yes, sir.
Q. "In sharp contrast, our company line shows a pattern of relatively even strength among all age groups and strength in the 25 and older categories, where we exceed both competitors." Correct?
A. Yes, sir.
Q. And what was being discussed there is that RJR at this point in time was the number one cigarette seller and it had a lot of the older smokers; didn't it?
A. That's what that seems to be saying, yes, sir.
Q. And that's consistent with your knowledge of the history of the company at that time; correct?
A. Yes, sir.
Q. Now do you think it was appropriate for the board to be discussing all age categories, including the 14- to 24-year-olds?
A. No, I don't. If in fact this was being discussed by the board, I don't think it's

appropriate.
Q. And the board's, again, the highest level of the

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company; correct?
A. Yes.
Q. Now if you go on to chart number six --
Well let me ask you something before -- before we go on to that, Mr. Schindler. You said earlier that RJR has a duty not to sell to youth; correct?
A. Yes. I feel a very strong personal ethical duty not to be marketing cigarettes to people under the legal age of the product because the product has risk, and people -- young people are incapable of -- of making a judgment given that risk of that product. I think it's -- it's wrong to do that and we haven't done it. I have no knowledge that we've ever done it.
Q. So if the board was discussing selling to 14-year-olds, 15-year-olds, 16-year-olds, 17-year-olds, all the way up to the age of 18, they would have been acting unethically in your judgment.
A. They were discussing, based on what I've seen here, what we've been going through, they've -- they've been -- somebody was presenting them an analysis -- analysis of brand choices of people between the ages of 14 and 24. That's what they were

doing. I don't see any here -- anything here that singles out 14 as opposed to 24. But this is -- but 14- to 15-year-olds, their --
This is an analysis of brand choice. This -- I haven't seen anything here yet that says, "Here's the marketing plan, board of directors, that we're going to follow, and here's the advertising and promotion and the packaging design and the product design that we have tested with 14-year-olds that we're going to roll out, and this is how we are going to get a bigger share of 14- to 16-year-olds." I haven't seen that anywhere in here. What I see is an analysis of brands that people between the ages of 14 and 24 were smoking at this time.
Q. Are you done?
A. Yes.
Q. Okay. Why don't you turn back to the first page. I'll just read it for you. "Our paramount marketing objective in 1975" --
I'll just stop there. "Paramount," does that mean number one?
A. Yes.
Q. Okay. Number one objective in 1975 from a marketing standpoint; correct, sir?
A. That's what it says.

Q. "...and ensuing years is to re-establish RJR's share of marketing growth in the domestic cigarette industry." Correct?
A. That's what it says.
Q. And then it says in order to accomplish that marketing objective, there are four key opportunity areas, and one was to increase the young adult

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franchise; correct?
A. Yes, sir.
Q. And the adult -- young adult franchise is defined as 14 to 24; correct?
A. In this --
Yes. In this document it is, yes.
Q. So 14-year-olds, 15-year-olds, 16-year-olds and 17-year-olds, all the way up to the year date of age 18, would be included in that marketing objective; correct, sir?
A. The way this document is stated, yes. That's what it says.
Q. And if RJR was doing that, that was unethical, in your terms; correct?
A. If -- if people in the company acted upon this and literally developed marketing plans at people under the legal age to buy the product, they were acting illegally.

Q. Illegally.
A. Or not ill -- I'm sorry, unethically.
Q. Well they were also acting illegally.
A. Well illegally, too, if you're under-age. And --
Q. And inappropriately; correct?
A. Well certainly.
Q. Because children, as you said, are incapable of making the choice; correct?
A. I think they have --
Yeah. I think it's a choice that they're not capable of making.
Q. And that would be particularly true if the product that they had to make a choice on addicted them; wouldn't it?
A. Well I'm --
The product has health risks, --
Q. That's not what I asked.
A. -- and if you smoke cigarettes it can become a habit, can be difficult to quit that habit, and young people shouldn't be smoking cigarettes.
Q. That would be particularly true if young people were addicted because it would impair their choice; correct?
A. If somebody smokes cigarettes and --

Yeah, there's the habit-forming nature of cigarettes, and they can be difficult for people to quit. Yes, that's part of that issue, in addition to the health risk.
Q. Now if we can go back, sir, to the page we were on. It's page two.
A. Okay.
Q. We were at chart five. Do you recall that?
A. Yes, sir.
Q. In chart five the board was having reported to it the relative strength of RJR products along all age groups; correct?

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A. Yes, sir.
Q. And all age groups includes 14-, 15-, 16- and 17-year-olds all the way up to age 18; correct?
A. I -- I don't know. I guess that's what that means.
Q. And chart six then says "Share By Age, Winston & Salem." Who makes those cigarettes?
A. We do. R. J. Reynolds Tobacco Company makes Winston and Salem.
Q. And they did in 1975; correct, sir?
A. Yes, sir.
Q. And Marlboro and Kool, who made those cigarettes?

A. Marlboro was made by Philip Morris, and Kool was made by B&W, Brown & Williamson.
Q. The same two companies that were described up in chart four about their particularly fast-growing major brands, Marlboro and Kool; correct?
A. Yes, sir.
Q. And particularly in the age 14 to 24 category; correct?
A. Yes, sir.
Q. So in chart six, RJR's relative market position was being compared to Marlboro and Kool, the cigarettes of Philip Morris and B&W respectively; correct?
A. Yes, sir.
Q. And sir, the board is being told what RJR's share was of the children's market there; wasn't it?
A. Well it would be shown -- was showing data here of a group of from 14 to 24, of which there are some age components that I believe shouldn't be in that -- in that kind of analysis, yes.
Q. Fourteen, 15, --
A. Fifteen, 16.
Q. -- 16, 17, up to the age of 18; is that right?
A. Yes, sir.
Q. And it is the board of directors at Philip

Morris that approves overall marketing plans on an annual basis.
A. R. J. Reynolds.
Q. I'm sorry, RJR. Isn't that right?
A. The board of directors approves marketing plans? Absolutely --
Q. The whole -- the overall.
A. Marketing plans?
Q. Yes.
A. Absolutely not.
Q. Doesn't.
A. Has absolutely nothing to do with the approval of marketing plans.
Q. So there's no reporting function that goes up to the board with regard to what marketing objectives of the companies are in a given year?
A. I make presentations at board meetings

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on -- basically all the board meetings, and I do updates on the business. I will do sort of -- we do a three-year strategic summary, we'll do an operating plan and review, and then there will be quarterly updates, you know, volume share, financial projections, and then discussions of brands, or, if appropriate, of what activities, new campaign, ad campaign, if it seems appropriate to show the board.

But the board is briefed on the plans. They do not sit in approval of the plans of my company.

Q. If the board had a presentation made to them by you and you said, "Here's what we're going to do with 14, 15, 16, 17, 18, all the way up to 24, over the next three years," the board could tell you, "Mr. Schindler, we're not going to market to those people." I just want you to assume you did that. I know you say you didn't.

A. I -- I -- I will not assume I would do that. I will not go with that theoretical question. I find the notion of that personally offensive.

Q. Well then you would find the notion that whoever presented this to the board personally offensive; is that right?

A. You asked me if the board has approval on our marketing plans, and I say they -- I said they do not have approval on our marketing plans.

Q. Sir, that wasn't my question. You would find this presentation personally offensive.

A. I would never do this. I --

If anybody came into my office suggesting -- which I don't believe that does, by the way, but suggesting a specific -- or -- or "Here, Andy, I have a marketing plan on how to increase our

share of market with 14-year-olds," they would be in serious trouble.

Q. Sir, can you answer my question? Do you find this presentation to your board of directors in 1975 personally offensive? Yes --

A. I --

Q. "Yes" or "no."

A. When I -- I --

Yes. I told you earlier that they --

Q. Thank you.

A. It's wrong to be talking about people that are 14, 15, 16 years old buying cigarettes.

Q. And the board at that time could have told whoever made this presentation that will not be done, because the board has that ultimate power; correct?

A. Maybe they did. I have no idea, Mr. Ciresi. I wasn't at this board meeting. I was with the company four months when this --

Q. The board could have told that person that; correct?

A. They could have and they may have, for all I know.

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Q. Did you do any investigation to see if they did?
A. Oh, on a board meeting in 19 --
Q. Yes.

A. -- 74?
No, I didn't.
Q. Now if you go on, then, in this chart six, what is being represented to the board is that the two major brands of Winston and Salem show comparative weakness among the younger smokers; isn't that right?
A. Yes.
Q. And then at the bottom of that page it said, "This suggests slow market share erosion for us in the years to come unless the situation is corrected." Is that what it says, sir?
A. Uh-huh. Yes, sir.
Q. And what they're talking about is the franchise smoker that you talked about; isn't that right?
A. I assume that's what they're talking about.
Q. If you go on to the next page, then, chart seven, "Strategy."
"Thus, our strategy becomes clear for our established brands." Do you see that?
A. Yes, sir.
Q. Number one, "Direct advertising appeal to the younger smokers...." Do you see that?
A. Yes, sir.
Q. And the younger smokers were defined as 14, 15, 16, 17, all the way up to 24; correct?

A. Yes, sir.
Q. And they also say we still have to be true to the brand's basic product attributes; correct?
A. Yes, sir.
Q. And we don't want to alienate the brand's current franchise; correct?
A. Yes, sir.
Q. And the current franchise were the older smokers; correct?
A. Well what -- whatever. It was the current franchise.
Q. And so then they went on to chart eight, "For Winston, we've followed this strategy in developing the new 'candid' advertising campaign which broke September 16." Correct?
A. That's what it says.
Q. Yes. Eight days before the meeting; correct?
A. Yes.
Q. And that strategy, the number one point of it, was direct advertising appeal to the younger smokers, which included 14-, 15-, 16- and 17-year-olds; correct, Mr. Schindler?
A. Yes, sir.
Q. So they --
A. That's what this --

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Yeah.
Q. That's what it says; doesn't it?
A. Yes, sir.
Q. And they say about that advertising campaign, candid advertising campaign, "It is especially designed to appeal to young adults." Correct?
A. That's what it said.
Q. And those, again, are the 14-, 15-, 16- and 17-year-olds; correct, sir?
A. That's what it says.
Q. And this is being presented to the board of directors; correct?
A. That's my understanding.
Q. They're being advised what type of advertising was instituted by this company on September 16th, 1974; correct?
A. That's --
Yes, that's what -- what's here.
Q. And here's what they say about that advertising. "Simple straightforward copy;" correct?
A. Oh, yes, sir.
Q. "Believable people with character;" is that right?
A. That's what it says.
Q. Is that young people?

A. I have no idea. I don't remember the -- I -- I have --
I really don't remember the campaign they're talking about.
Q. Winston campaigns use young people in their ads?
A. No.
Q. Never did?
A. Not that I know of. Everybody that I know of in the ads were at least, you know, 25 and older. I mean we -- I've never seen --
Are you talking about 14-year-olds?
Q. Well let me ask you -- no, I --
You wouldn't be so obvious as to use 14-year-olds in an ad; would you?
MR. WEBER: I object to the argumentative nature of that, Your Honor.
MR. CIRESI: Well he asked, Your Honor.
THE COURT: Counsel, sustained.
Q. Did you ever see an ad by RJR which had a 48-year-old person dying of chronic obstructive pulmonary disease with a Winston in their hands saying, "These are really good for you?"
MR. WEBER: Objection, Your Honor.
Q. Did you ever see that?
A. No.

MR. WEBER: It's argumentative again.
THE COURT: Sustained.
Q. Did you ever see old people -- take my age

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old -- 50 or above, dying from smoking-related diseases, on TV or in ads sponsored by RJR saying, "This is really great for you?" Did you ever see that?

MR. WEBER: Objection, Your Honor, it's argumentative. The same question as last time.

THE COURT: That sounds familiar, counsel. Sustained.

Q. "Believable people with character," that's what you wanted to do; correct, sir?

A. Yes. Not --

That's what's being written here.

Q. "To appeal to young adults;" correct?

A. That's what it says.

Q. People that they could look to as peers and wanted to emulate; correct?

A. I wasn't there. I -- I can't get into the mind --

You're asking me to interpret the minds of people four months into working with the company that I maybe never knew of until about, you know, six, seven, eight, nine months ago in this document, and

you want -- I don't even know who presented this thing, and you want me to interpret what they were thinking in developing an ad campaign? I cannot do that. I have no idea what they were thinking. I know what the words say here, but I can't get into the minds of somebody at a meeting that I was never at. And I don't even know who was there.

Q. This morning when you started you said RJR never marketed or targeted young people --

A. I --

Q. -- in the entire time that you were with the company. You said that; didn't you, sir?

A. Yes. I've --

Q. And now you said that you read this article -- or this document nine months ago; correct?

A. Yeah, something like that.

Q. So you knew what these words said when you made the statement under oath --

A. Oh.

Q. -- that RJR never marketed to young people; didn't you?

A. I have never in my 24 years with this company, in all of my experiences, had anybody suggest or talk about marketing cigarettes to 14-year-olds or 15-year-olds or 16-year-olds. I've never encountered

that in my 24 years. I've been on the Executive Committee for 10 and the president for four, and I've never, in my experience, ever heard anybody in the day-to-day business of working in the business, with all the issues and problems, talking about we have to increase our share of 14-year-olds.

Q. Could you answer my question?

A. Yes. I told you I've never heard people doing

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this in the course of my business --
Q. You said --
A. -- when I was with the company.
Q. You said this morning that RJR never marketed to youth in all of the time that you were with the company, and when you said that, you knew about this document. "Yes" or "no?"
A. Well, I knew about this document.
Q. Now let's go on and see what the document says in addition to what we've already seen.
"Research has shown that among young adults" --
Again, the 14- to 24-year-olds; correct?
A. Yes, sir.
Q. -- "the new Winston ads generate twice as much recall as any previous Winston campaign and are 40 percent more persuasive compared to the Marlboro campaign;" correct?

A. That's what it says.
Q. So your company in 1974 had gone out and surveyed to see how effective their ads were to young adults including 14-, 15-, --
A. I had --
Q. -- 16- and 17-year-olds; correct?
A. I had no knowledge of that. I have never seen a document -- I have never seen a document that said that we were doing ad research among 14-, 15- and 16- and 17-year-olds.
Q. That's what this says; doesn't it, sir?
A. No, it says "young adults." It doesn't say we did ad research with 14-, 15-, 16- and 17-year-olds.
Q. Let's go back to young adults, page one. "...this young adult market, the 14-to-24 age group...," do you see that?
A. Yes.
Q. Okay. Now if you go back to the page we were on, this shows that research reports were being given to the board regarding young adults; correct?
A. It says young adults.
Q. And young adults was defined in this document; wasn't it, sir?
A. They defined young adults as 14- to 24-year-olds.

Q. And what the board was being told is that the new Winston ads generate twice as much recall as any previous Winston campaign and are 40 percent more persuasive compared to the Marlboro campaign among those age groups; correct?
A. It says that the new Winston ads generate twice as much recall as any previous Winston campaign and are 40 percent more persuasive than Marlboro. That's what it says.
I have no knowledge -- I have never seen a document, I don't know of any --
I've never known the company to do ad research with 14-year-olds.

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Q. Well, the board was being told about research for young adults which was being defined as 14, 15, 16 and 17, all the way up to 24 years old; correct, sir?
A. I don't know what somebody said to the board beyond what is on this document. I have no knowledge, have never heard of, never seen anybody doing ad research, quantitative marketing research, qualitative marketing research, taste test, reviewing promotions, any of the normal things that you do in the marketing of a product when you are trying to persuade somebody to buy your product. I have never

seen any of that research ever done against 14-, 15-, 16-, 17-year-olds.
Q. Is --
A. And I would not look at this document and draw that conclusion. That is totally inconsistent with my experience, that they have ad research of 14-year-olds.
Q. Did you ever see any document in RJR produced by your lawyers that said, "This exhibit," 12493, "never happened?" Did you ever see that?
A. You mean --
No, I never saw that.
Q. Did you ever see any document that said, "This document about a presentation to the board was a figment of somebody's imagination?" Did you ever see such a document?
MR. WEBER: Objection, Your Honor, he's arguing again.
THE COURT: No, you may answer that.
Q. Did you ever see one?
A. Nobody ever said that.
Q. Did you ever see a document that said, "This presentation is a lie?" Did you ever see that?
A. No.
Q. Now what we do know is, if we go on to chart

nine, we see that even for Salem, significant improvements were going to be made designed for more young adult appeal; don't we, sir?
A. That's what it says.
Q. And this was going to include more true-to-life young-adult situations; correct?
A. Yes, sir.
Q. More dominant male visuals; correct?
A. That's what it says.
Q. A greater spirit of fun; correct?
A. Yes. Yes, it does.
Q. Greater use of water as a refreshment symbol; correct?
A. Yes.
Q. And what it, the board, was told is that research has shown these changes have measurably improved the ads in terms of greater recall; correct?
A. That's what it says.

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Q. Greater refreshment playback; correct?
A. Yes.
Q. More young adult appeal; correct?
A. That's what it says.
Q. And then it goes on to say that efforts to identify an even stronger campaign are being aggressively pursued by two advertising agencies, and

at least one campaign is anticipated to be market tested in early 1975; correct?
A. That's what it says.
Q. And it goes on to say that further young adult emphasis is being placed through the successful Salem box "denim" campaign;" correct?
A. Yes, that's what it says.
Q. Then it talks about Camel filter advertising; correct?
A. Yes, sir.
Q. And if we go on to the next page, we see that advertising awareness has increased among prime prospects -- young adult males; correct?
A. Yes, sir.
Q. Then it talks about a new program for the Camel filter; correct? Chart 12.
A. Yes, I -- but I notice that it also talks about 18 to 24 up there with "Advertising awareness...."
Q. It's also increasing it in that age group; correct?
A. Yes.
Q. Yeah.
A. But not 14-year-olds in that one.
Q. It's increasing it in both; isn't it, sir?
A. I have no idea. But it seems to me there's two

definitions for young adult in this presentation.
Q. Oh. So you're accepting --
Now you accept that this was presented, the 18 to 24 male group?
A. Oh, it's -- it's in this presentation.
Q. So there's an 18 to 24 male age group, too, also?
A. Well they're talking about 18 to 24 here. You were talking about, you know, 14-year-olds and ad research, and I just noticed as you skipped over that there was 18 to 24 suddenly in this thing.
Q. Sure. They segment markets; don't they?
A. Well all marketeers segment markets.
Q. Thank you, sir.
A. I --
Q. Now chart 12, "New Program for Camel Filter;" correct?
A. Yes. Yes, sir.
Q. Starting in July 1974, a new marketing program was put into the test market, targeted at young adults and designed to be even more competitive against Marlboro; correct?
A. That's what it says.

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Q. That's about the time you started; correct, sir?
A. Yes. That's about a month or so after I started

with the company.
Q. Now you weren't in marketing; were you?
A. I wasn't in the tobacco company. I was in R. J. Reynolds Industries.
Q. And one of the programs was a new Meet the Turk advertising campaign; correct?
A. Yes, sir.
Q. And a new Marlboro-like blend in the product, do you see that?
A. That's what it says.
Q. Do you know what the new Marlboro-like blend was?
A. No.
Q. Do you know if there was manipulation of pH?
A. No.
Q. "Significantly increased ad campaign;" correct?
A. Yes, sir. That's what it says.
Q. And do you know what the Meet the Turk campaign was, sir?
A. I sort of remember it from those days, seen it recently. It was a -- a guy that looked like he was about 33, 30 to 35 years old with dark hair and a mustache.
Q. And there were some problems with that because of the Greek/Turkish war at the time?

A. That's what I understand.
Q. And was that campaign subsequently pulled because of those problems?
A. Yes. That's my understanding of it, yes.
Q. If you go on to the next page, right above chart 14, do you see where "Ad spending has been increased in 1975 with more targeted efforts against young adults to more fully exploit this potential?"
A. Yes, sir.
Q. And you see in chart 14, "We have also increased our media efforts toward young adults for our brands?"
A. Yes, sir. Yes.
Q. And can you go on to the next page. There was also special events --
A. Yes, sir.
Q. -- directed against young adults; correct?
A. Yes, sir.
Q. And if you go on to the next page, sir, chart 17, there were also special events and promotional activities; correct?
A. Yes, sir.
Q. Heavy involvement at the event site; correct?
A. Where -- where are you?
Q. Right next to chart 17.

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A. Oh. Yes, sir.
Q. Permanent billboard advertising and brand exclusivity at concession stands; correct?
A. Yes.
Q. Sell our branded event-related items such as Winston hats, shirts, jackets; correct?
A. Yes.
Q. Tie-in banners and posters, I think it should say, with strong brand identification and brand commercials over the public address systems; correct?
A. Yes, sir.
Q. And can you go on to the page which bears the Bates number 1320. And that's the number in the right-hand side, sir. That's the same exhibit. You see the small numbers on the right hand?
A. Oh.
Q. Those are called Bates numbers.
A. Right, one --
Q. 1320.
A. Got it.
Q. Do you see here at the top it says, "Finally, successive waves of couponing will be tested in '75?"
A. Yes, sir.
Q. "By way of explanation, we will select a specific market of young adults. These people will

be given successive waves of coupons good for a substantial price reduction on a carton purchase."
A. Yes, sir.
Q. "We will then track this group to determine the amount of switching to our brand."
A. Yes, sir.
Q. "The strategy here is to take these customers 'off the market' for their regular brand long enough to convert them." Do you see that?
A. Yes, sir.
Q. And would you agree that young people have less income, generally speaking, than people in the work force?
A. Yes, sir.
Q. Would you agree they're more price sensitive?
A. No.
Q. You wouldn't.
A. No, sir.
Q. Okay. If we go on, then, "Our special merchandising division is in its second year with its successful wholesale operation of premiums at beaches and special events through a separate sales force and a mobile store." Correct?
A. Yes, sir.
Q. And young people gather at beaches; don't they,

sir?
A. Yes. And old people and middle-aged people.
Q. I'll grant you that. All ages; isn't that right?

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A. Yes.
Q. But young people hang out on beaches a lot; don't they?
A. I'm 53. I hang out on the beach a lot when I get a chance. So young people hang out on beaches, lots of people hang out on beaches.
Q. "We anticipate selling over a million items in 1975 -- a million 'walking billboards' for our brands;" correct?
A. Yes, sir.
Q. "We will continue our special sampling programs on beaches, resort areas and sports arenas in major metro markets -- where there are large concentrations of young adults." Correct, sir?
A. Yes, sir.
Q. They don't talk about large concentrations of CEOs hanging around beaches; do they?
A. No, they hadn't on here.
Q. And can you go on to page 1322.
A. Is this -- is this the one with --
Okay, I got it.

Q. Same -- same document.
A. I got it.
Q. See where it says, "Metro Action Programs?"
A. Yes, sir.
Q. It says, "The marketing development manager concept became a reality in July of this year" --
A. Yes, sir.
Q. -- "and to date we have seen most encouraging programs?"
A. Yes, sir.
Q. And that would be in July of 1974, the time you joined the company; correct, sir?
A. No, I -- no, I joined in late May of '74.
Q. Well, you were there about a month and a half.
A. Right.
Q. "We have substantially increased our vending distribution through the establishment of area vending managers who are responsible for and pay close attention to vending." Correct?
A. Yes, sir.
Q. "We have implemented the salesman 'Ride with the Vendor' program tied with bonus placement payments on Salem Super and Vantage." Correct?
A. Yes, sir.
Q. Now are young people able to get cigarettes

easier from vending machines than they were over the counter, if you know?
A. Oh, I would -- I would think so. If you had a vending machine outside of a bar, for example, where it would be hard. Quite possible.
Q. And on the next page, you see a plan to further increase the vending distribution?
A. Yes.
Q. And that was going to be by working with the

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Tru-Check computer system in '75; correct?
A. Yes, sir.
Q. And that was an organization that provided computer printouts on brand placements in vending machines; correct?
A. Yes, sir.
Q. Did you hear of the Tru-Check program?
A. Well I began to work in sales in April of '76, and I remember hearing of Tru-Check, yes.
Q. What's your understanding of Tru-Check, sir?
A. It's a -- what it says here, it was a way of, you know, tracking placements. You know, a vending machine is like a carton display or a package display, you make payments to get slots to get your brand in -- in the distribution channel. This is, you know, fairly typical of how you get distribution.

You want to make your product available at retail.
Q. Make it more widely available for retail; correct?
A. You want to make your product as available at retail as you possibly can. All consumer product companies want to do that.
Q. Do you know any other consumer product industry whose product is reported to kill over 400,000 people a year?
MR. WEBER: Object to the argumentative nature, Your Honor.
THE COURT: You may answer that.
A. No, sir.
Q. There were also localized promotions, if you go over to page 1324; is that correct?
A. Yes, sir.
Q. And these local promotions related to various demographic groups in our society; correct?
A. Yes.
Q. Puerto Ricans, African Americans; correct?
A. Yes, I believe that's --
Yes. Yes.
Q. And RJR was increasing its activity in those areas; correct, sir?
A. According to this, yes.

Q. And they put up a super wall display, a gigantic painted wall about the size of a half an acre on 8th Avenue in New York City; correct?
A. Yes, I see that. Yes.
Q. You also hired at that time fashion consultants; correct?
A. Where is that at?
Q. Go to page 1325A.
A. Okay.
Q. Chart 29, do you see it?
A. Yes.
Q. "...we have just introduced a new advertising campaign in women's magazines;" correct?
A. Yes.

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Q. Tied in designers such as Bill Blass, Ralph Lauren, Calvin Klein; correct?
A. Yes, sir.
Q. Hired a fashion consultant; correct?
A. Yes, that's what's here.
Q. And put 50 window in-store displays in Bloomingdales, Filene's, I. Magnin, other top department stores; correct?
A. Yes, sir, that's what this says.
Q. And you know that was done; don't you, sir?
A. No. I wasn't in marketing, I was working at RJR

Industries. I don't remember Bloomingdales and Filene's and the Salem fashion consultant.
Q. Could you go on to page 1327.
You just don't remember; is that right, sir?
A. Well I don't. This is 23 years ago.
Q. Go on to page 1327.
A. Yes, I'm there.
Q. And chart 31 was the key growth opportunities reviewed again; wasn't it?
A. Yes, sir.
Q. And it says here, "We have reviewed the new and improved programs for our established cigarette brands designed to:
"Increase our young adult franchise." Correct?
A. Yes, sir.
Q. That's what they were designed to do as reported to the board in September of 1974; correct, sir?
A. Could you ask that question again?
Q. Yes. That's what they were designed for as reported to the board in September of 1974.
A. I can't say that's the case, I wasn't there.
This is a very long report that we just went through, or presentation. There is specific data about 14- to 24-year-olds relative to brand choice and tracking data. We get the -- you then say

there's evidence of ad research, which I have no knowledge of, and then they start talking about all of their marketing plans for, I guess, the -- you know, for '75 or whatever, and I have no knowledge that they were sitting down doing product research, ad research, focus groups, all that sort of stuff that you do to direct something at someone during this period of time, and that they were after 14- to 17-year-olds based on this presentation. It is completely incongruent with my own experience in the organization, and I became part of the sales organization, the sales component of this, in April of '76, and I never heard anybody talking about we got to get more 14-year-olds smoking our cigarettes and we've directed this ad campaign at 14-year-olds, or the Salem fashion program and Filene's is after 16-year-olds. I've never heard anything like that.
Q. Are you done?
A. Yes.

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Q. Okay. But we do know that what was reported to the board is that research has shown that among young adults, the new Winston ads generate twice as much recall as any previous campaign and are 40 percent more persuasive compared to the Marlboro campaign. We do know that this document shows that this was

reported to your board of directors in September of 1974; don't we, sir?
A. I have -- I have no idea, and I don't think you do either, that -- in that particular paragraph, if they're referring to 18- to 24-year-olds or what. I do not believe this company, to my knowledge, has ever done ad research on 14-year-olds.
Q. Let's go over to the next page.
Were you done, sir? I didn't mean to cut you off.
A. No, we're -- you want to go to the next page.
Q. Were you done with your statement there?
A. Yes.
Q. Go to the next page, 1328. "New opportunity new brands," chart 32, do you see that?
A. Yes, sir.
Q. "New brands and/or line extensions with benefits or new personalities and with directed appeal to younger smokers offer the quickest opportunity to combat Marlboro and Kool." Correct?
A. Yes, sir.
Q. Do you know what percentage of the under 18 age segment Marlboro and Kool had in 1974?
A. No, sir, I don't know.
Q. Can you direct your attention now to Exhibit

12377.
A. "DOMESTIC OPERATING GOALS?"
Q. That's it, sir. ""RJR REYNOLDS TOBACCO COMPANY DOMESTIC OPERATING GOALS;" correct?
A. Yes.
Q. Trial Exhibit 12377; correct?
A. Yes, sir.
MR. CIRESI: We'd offer that exhibit, Your Honor.
MR. WEBER: No objection, Your Honor.
THE COURT: Court will receive 12377.
BY MR. CIRESI:
Q. Now what's a domestic operating goal?
A. It's a business goal for the domestic tobacco company.
Q. Why are goals set?
A. So you have something to strive for.
Q. Something to shoot for; correct?
A. Yeah, something to shoot for, something to strive for. That's what goals are set for.
Q. Okay. Well let's see what RJR was striving and shooting for. "MARKETING GOALS."
If you turn to the next page, by the way, you see this is November 26th, 1974, do you see that at

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the top?

A. Yes.
Q. Okay. This is about two months after the board meeting; correct?
A. Yes, sir. Two, three months, yes.
Q. "MARKETING GOALS." As you say, something to strive for.
"Primary goal" -- and this would, I guess, be the primary thing RJR was striving for; correct?
A. That's what it says.
Q. "Primary goal in 1975 and in ensuing years is to reestablish RJR's share of growth in the domestic cigarette industry." Sound familiar?
A. I just read it here.
Q. Does it sound familiar?
A. You mean have I heard this before?
Q. Yes.
A. In 1975? No. Or '74, whenever this was done.
Q. Didn't we just see that back in the --
A. Oh, you're talking about the previous --
Well it sounds the same as the previous document.
Q. Sounds the same as the document that was the presentation to the board; correct, sir?
A. They had the goal to increase the share of market.

Q. "Increase our Young Adult Franchise.
"14-to-24 age group in 1960 was 21 percent of population; in 1975 they will be 27." Do you see that?
A. Yes.
Q. "As they mature, will account for key share of cigarette volume for the next 25 years." Correct?
A. That's what it says.
Q. "Winston has 14 percent of this franchise, while Marlboro has 33 percent." Correct?
A. That's what it says.
Q. Remember, I just asked you what the -- if you knew what the market share was of Marlboro?
A. Yes.
Q. But -- no, that's not fair. Let me retract that, because I think when I asked you I asked you for under 18. So forget that question. All right, sir? Let's just --
A. I'll be happy to.
Q. Let's look at this document.
"Winston has 14 percent of this franchise, while Marlboro has 33." Do you see that?
A. Yes.
Q. Okay. Now this evidences the fact that RJR was looking at that age group and ascertaining what its

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market share was; correct?
A. Well the 14-to-24 age group, according to this document, yes.
Q. Yeah. Wrong? Wrong thing to do?
A. I testified earlier that I don't believe you should be looking at brand traces and franchises of people that are under the age -- legal age to buy the product, and you shouldn't be looking at 14-, 15-, 16-year-olds.
Q. Mr. Bible testified yesterday when he saw --
I want you to assume Mr. Bible testified when he saw documents like this regarding Philip Morris --
MR. WEBER: Objection, Your Honor. Before we even -- I'm sorry for interrupting. Before we even get to that, the court has repeatedly sustained objections when someone characterizes another witness's testimony, so before we even got there I wanted to make the objection.
THE COURT: Well it's very difficult if I don't know what he's going to ask.
Q. I would like you to assume, sir, that Mr. Bible on a number of occasions, when faced with documents which showed that Philip Morris was looking at youth and smoking, that he said he was ashamed. I want you to assume that. All right?

A. Okay. I'll take your word for it.
Q. If Philip Morris was doing what is reflected in these two documents, are you ashamed?
MR. WEBER: Let me object, Your Honor, for the same reasons we just went through.
THE COURT: No, you may answer that question.
A. I'm -- I have --
I don't know that they were targeting 14-year-olds in the way that you are suggesting here with these ad campaigns and sampling programs and all that sort of thing. I don't know that that was going on. I think they were wrong to be doing analysis of brand selections from people who were 14, 15 and 16 years old, and, you know, I -- we don't do that today. It shouldn't have been done then in my opinion. And I'm not ashamed of that. I think it was wrong. I don't think they should have been doing that. It is the core, the policy of the company, my personal belief is you don't market cigarettes to people under the legal age to buy the product; that if you did that, that would be something to be ashamed of. That is clearly, to me, unethical. If you get around that and start -- you're not doing that, but you start analyzing brand traces of

under-age to project future markets, I think that's wrong, I think it's, frankly, stupid, and it shouldn't be done and it's unnecessary.
But there's nothing here that I know for sure, based on my own experience with the company, that I

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say I'm ashamed of what they did, when my experience was when I worked in sales, when I worked in the company, that I never heard anybody talking about directing marketing efforts at 14-year-olds. It --
You know, back in 1976 -- well in '77, '78, another guy and myself put together the sales plan for one of the biggest marketing product launches in the history of consumer products, a product called Real cigarettes --
Q. Excuse me, sir.
A. -- and --
MR. WEBER: May he complete his answer, Your Honor?
MR. CIRESI: Your Honor, I'm going to ask that the witness be instructed to answer the question.
THE COURT: Well it is -- he's really starting to wander. I really think that is not really responsive.
A. I am not ashamed of something that somebody did

24 or 25 years ago when I don't even know what they did. And what is being suggested here is completely counter to my own experience working back in those days.
Q. Is your answer no?
A. No.
Q. Thank you.
Now, what the document shows they were doing is as follows: "We will direct advertising appeal to this young adult group without alienating the brand's current franchise." Correct?
A. That's what it says.
Q. So they have the goal at the top, which you say is something to strive for; correct?
A. Yes.
Q. And then they say how they're going to achieve that goal; don't they?
A. That's what it says.
Q. And the goal is to increase the young adult franchise, which is 14- to 24-year-olds; correct, sir?
A. That's what's being said here. That's --
Q. And one of the ways they're going to do it is set forth on the next page, which is the Tru-Check vending machine program; correct?

A. No, I don't think that's true. I mean Tru-Check is just a mechanism to get distribution in one of the channels in a distribution system, a vending machine. It was a distribution program.
Q. And the -- and the distribution --
A. The master strategy to get 14-year-olds to buy cigarettes, I can't believe that.
Q. And the distribution system that they were talking about here was 14- to 24-year-olds; correct?
A. I don't believe that.

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Q. That's what it says, though.
A. I worked in sales in April --
Q. Excuse me.
A. -- of '76, and I with man --
I never heard anybody talk about Tru-Check and vending as a way to get 14-year-olds to start smoking cigarettes.
Q. I know that's what you're saying here, sir, but but we have documents --
MR. WEBER: Let me object to counsel's argument and commentary, Your Honor. It's not a question.
THE COURT: Okay. Ask your question, counsel.
Q. We have documents; correct, sir?

A. You have a lot of documents.
Q. Now do you think the person who authored this document knew that it would somehow, some way, some day, get into the hands of the state of Minnesota's lawyers?
MR. WEBER: Objection, Your Honor, it's argumentative and irrelevant.
THE COURT: Well it's not irrelevant. You can answer.
A. I seriously doubt that in November 26th, 1974, who -- whoever wrote this thought this would end up in the state of Minnesota.
Q. Fair to state that the person who writes documents internally thinks they're going to stay internal?
A. I don't think there are many people working for Reynolds today that believe if they write a document it's going to stay internal today.
Q. I would agree with you today, sir. I would agree with you today.
MR. WEBER: Let me object to counsel's commentary, again, Your Honor. It's not a question.
Q. If --
THE COURT: Go ahead.
Q. -- people today feel that way, they're going to

be a little more careful the way they write memoranda today; aren't they, sir?
A. We write --
People write memoranda. They write memos. You asked me if I thought that these people knew this document would end up in Minnesota, and I said no, I don't think they did.
Q. That's not what I asked you.
A. And --
Q. That wasn't my last question.
People today, you say, think their documents may get out, so my question to you is pretty simple: People today, having that in mind, are going to be a little more careful the way they write memos; aren't they?

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MR. WEBER: Argumentative and irrelevant, Your Honor.
A. I --
THE COURT: You can answer.
A. May or may not be. I can't tell you everybody that writes -- you know, I don't know --
Careful about what?
Q. Well --
A. About describing our business and our objectives and what we're trying to do?

Q. Haven't you been aware that RJR gives lessons as to what to say and not say in memos?
A. No, I -- I'm not aware of that one.
Q. You're not aware of the lawyers saying be careful about what's said in memos?
A. I have no knowledge of lessons being given to people in the company on how to write memos and what language to use.
Q. Ah, my last question was a little different.
A. I missed it then.
Q. Are you aware that lawyers have said to be careful about what's put in memos?
A. I am not aware of that.
Q. You're not aware of that.
A. No, I'm not.
Q. Let's go back to Exhibit 12377. You've never seen any document that said this is false.
A. I'm -- I'm -- where --
Where are we?
Q. Same exhibit.
A. Okay.
Q. 12377, the domestic operating goals, what RJR was striving for back in 1974.
A. Right.
Q. All right? On the second page, after talking

about its marketing goal, which was to increase the young adult franchise, they talk about the vending machine sales and the Tru-Check computer systems; correct?
A. Yes.
Q. And if we go on, we will see that they talk about exploiting the potential of the growing cigarette categories; correct?
A. Yes.
Q. And they talk about the fact that they hired a fashion consultant; correct?
A. Are we on the same --
Where are we?
Q. I'm on Exhibit 12377.
A. And which Bates number?
Q. Look at page --
If you go to page two at the top.
A. Okay.
Q. It's Bates --
Do you have that?

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A. Yes, I have it.
Q. You see the vending machine there?
A. I'm with the vending machine.
Q. Now go to the next page, page three.
A. All right. Okay. All right.

Q. There's a reference to the fact that a fashion consultant was hired; correct?
A. Super -- sale of --
Q. First bullet point, sir, last sentence.
A. Oh, yes, I got it. Okay. "We have hired a fashion consultant...," yes.
Q. Same thing we saw in the report to the board two months before; correct?
A. Yes.
Q. And the vending machine and the Tru-Check system we saw in the report to the board two months before; correct?
A. Well I believe so.
Q. And developing new brands and line extensions, do you see that down at the bottom of that page?
A. Yes.
Q. And this is reference that this would afford us, meaning RJR, the quickest opportunity to combat Kool and Marlboro and with directed appeal to the young smoker; correct?
A. That's what it says.
Q. And if you go to the next page, page four at the bottom of the page talks about working on a cigarette in which 95 to 98 percent of the nicotine has been removed; correct?

A. That's what it says, yes.
Q. Well you know that you can remove almost all the nicotine from cigarettes; don't you, sir?
A. We could do it today. I mean there are processes --
I mean if somebody told me go take all the nicotine out of cigarettes today, I couldn't do it; I don't have the processes to do it, I don't have the capacity or the process to do it. There is technology where you can remove nicotine from cigarettes, yes.
Q. Okay. That's what I mean. It's -- it's technically feasible; isn't it, sir?
A. Sure.
Q. Can you direct your attention now to Exhibit 12865.
A. Got it.
Q. By the way, who usually gets the domestic operating marketing goals?
A. Who --
Q. Yes.
A. Who -- who gets the goal?
Q. Who gets the documents setting forth the domestic operating goals?
A. Everybody in the company knows what our market

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share goals are, and the financial goals.
Q. Goes right to the CEO of the company; doesn't it?
A. Oh, everybody --
The people that run the machines in the factories know our goals.
Q. The last document we saw, domestic operating goals, a document like that would go to the top of the company; correct, sir?
A. I would assume that document went to the -- to the CEO of the tobacco company.
Q. All right. Now if we can direct our attention to Exhibit 12865, do you see that's from a Mr. Hind to Mr. C. A. Tucker?
A. Yes.
Q. And you know who Mr. Tucker is?
A. Charlie Tucker was the vice-president of marketing and sales, I -- back in January 1975.
Q. High official.
A. He was --
Yes, he was the head of marketing and sales.
Q. What was his function as head of marketing and sales?
A. He was responsible for the marketing and sales departments in the company.

Q. What does that mean?
A. All the development of marketing plans, sales plans, ad campaigns, promotions, distribution, you know, merchandising programs at retail, all -- he had that responsibility.
Q. The whole gamut; correct?
A. Yes.
Q. Okay. In order to achieve the marketing goals of the company; correct?
A. Yes.
Q. Now this document is dated January 23rd, 1975?
A. Yes.
Q. Marked "SECRET," "RJR SECRET?"
A. Yes.
Q. When are "SECRET" stamps put on documents at RJR?
A. When you don't want your competitor to know about it. I would think that's why it was put on there.
Q. Is that the only reason to put it on?
A. Well that's the only reason I know of.
Q. It's also restricted access; isn't it?
A. Yeah, restricted access for the purpose of making sure competitors don't find out about things you're trying to do.

Q. Restricted distribution within the company;

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correct?
A. Yes. Typically something that is secret would be restricted access.
MR. CIRESI: Your Honor, we'd offer Exhibit 12865.
MR. WEBER: No objection, Your Honor.
THE COURT: Court will receive 12865.
BY MR. CIRESI:
Q. Now this is from Mr. Hind; correct?
A. Yes, it is.
Q. Do you know Mr. Hind?
A. Well I remember Jim Hind. He -- yes, I remember him.
Q. Now were you in the marketing department at this time?
A. No, I was in R. J. Reynolds Industries.
Q. How long were you at the Industries at that point, sir, RJR Industries?
A. Oh, I started in May, so seven, eight months.
Q. May of which year?
A. '74.
Q. So you were there for seven or eight months?
A. Yes.
Q. And then you went to RJR Tobacco?

A. Yes, in April of '76.
Q. '76.
Now this document to the vice-president, Mr. Tucker, who's in charge of all marketing and sales, distribution, advertising, promotion, states as follows: "Our attached recommendation to expand nationally the successfully tested 'Meet the Turk' ad campaign and new Marlboro-type blend" --
Do you know what that is?
A. No.
Q. It was an ammoniated cigarette; wasn't it?
A. I don't know that.
Q. Pardon me?
A. I don't know that. I don't know what the new Marlboro-type blend was in January of 1975.
Q. -- "is another step to meet our marketing objective," and then the marketing objective is stated; isn't it?
A. Yes, it is.
Q. "To increase our young adult franchise."
A. That's what it says.
Q. "To ensure increased and longer-term growth of for Camel filter, the brand must increase its share penetration among the 14-to-24 age group which have a new set of more liberal values and which represent

tomorrow's cigarette business." Correct?
A. That's what it says.
Q. To the person who is in charge of implementing the marketing objectives on behalf of this corporation; correct, sir?
A. That's -- that's right. Yes, sir.

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Q. Did you ever see a document back from Mr. Tucker to Mr. Hind saying "What are you talking about? I'm not going after 14- to 24-year-olds?" Did you ever see such a thing?
A. No, I didn't.
Q. "Presently, almost two-thirds of the Camel filter business is among smokers over 35 years of age, more than twice that for Marlboro."
So the RJR brands had aging customers; correct?
A. Yes, according to this.
Q. And that's consistent with your knowledge of the history of that company; is it not, sir?
A. Yes, it is. Yes.
Q. And Mr. Hind goes on, "While 'Meet the Turk" is designed to shift the brand's age profile to the younger age group, this won't come over night. Patience, persistence, and consistency will be needed. There may even be temporarily a softness in Camel Filter's growth rate as some of the older, more

conservative Camel Filter smokers are turned off by the campaign and younger, more liberal smokers begin to come into the brand's franchises. Test market results suggest, though, that this risk is small."
Do you see that?
A. Uh-huh, yes.
Q. You have to answer.
A. Yes, I -- yeah, I see that.
Q. And that younger more liberal group were the 14- to 24-year-olds; correct, sir?
A. That seems to be what he's talking about here.
Q. Doesn't seem to be. It is; isn't it?
A. Well it's what he's talking about, 14 to 24.
Q. And today those 14- to 24-year-olds, if they're still alive, are 37 to 47; aren't they, sir?
A. Yes.
Q. Shows that you were marketing to 14- to 24-year-olds; doesn't it?
A. Look, Mr. Ciresi, all I can answer to is my own experience. I started working with Charlie Tucker somewhere -- it was on a consulting basis -- somewhere in the summer of '75, went to sales in April of '76. I -- you know, I don't have any memory of, in all those years of working in the company in the sales and manufacturing, of people

talking about developing marketing plans for 14-year-olds.
Q. Sir --
A. When I first saw this document and some of the others, I went to a couple of my senior people that were at the brand management level back in the late '70s and early '80s and tried to ask them. I said, "Is" -- you know, I was shocked. I said, "This is inconsistent with what I experienced. How do you feel" --
Q. Your Honor, I ask --

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A. Well I'd like a chance to --
MR. CIRESI: No. Excuse me, sir. Your Honor, I'm going to ask that that be stricken. It is non-responsive.
THE COURT: I think the witness is beginning to wander. You will have a full opportunity with your attorney to present your side of the case. At this point in time, under the process, you should try and restrict your answers to the questions that are asked. Okay?
Maybe you should re-ask the question so the witness understands it.
BY MR. CIRESI:
Q. Let me ask it this way: You worked under Mr.

Tucker in 1975 and 1976; correct?
A. I started working with Charlie Tucker somewhere in summer of '75, as I recall.
Q. About four or five months after this memorandum; correct, sir?
A. Yes.
Q. You were part of the sales team; correct?
A. At that point I worked for R. J. Reynolds Industries and I was doing an organizational consulting project for Mr. Tucker and Don Grout, who was the head of sales.
Q. And did you have responsibility to implement and carry out the marketing objectives of RJR in 1975 --
A. No.
Q. -- to 1976?
A. No, I didn't.
Q. None at all.
A. None at all.
Q. Have you ever seen a memorandum from Mr. Tucker back to Mr. Hind saying, "This is not our marketing objective?"
A. No, I haven't.
Q. Have you ever seen a letter from any member of the board of directors in 1974 back to the marketing department saying, "That will not and cannot be our

objective?"
A. No, I haven't.
THE COURT: Counsel, I think we'll recess for lunch at this time. We had a short recess before.
THE CLERK: Court stands in recess.
THE COURT: 1:30.
THE CLERK: To reconvene at 1:30.
(Recess taken.)

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AFTERNOON SESSION.

THE CLERK: All rise. Court is again in session.

(Jury enters the courtroom.)

THE CLERK: Please be seated.

THE COURT: Counsel.

MR. CIRESI: Thank you, Your Honor. Good afternoon, ladies and gentlemen.

(Collective "Good afternoon.")

BY MR. CIRESI:

Q. Good afternoon, sir.

A. Mr. Ciresi.

Q. We were on Exhibit 12865, Mr. Schindler. If you could direct your attention again to that exhibit. It's in volume one.

A. I'm there.

Q. Do you have it, sir?

A. Yes, sir.

Q. All right. Again, this was the memorandum from Mr. Hind -- or Hind --

A. Mr. Hind.

Q. -- to Mr. Tucker. It's pronounced Hind?

A. Hind.

Q. Now directing your attention again to the first

paragraph where it says the "new Marlboro-type blend is another step to meet our marketing objective," do you see that?

A. Yes.

Q. And that objective was to increase the young adult franchise. Do you recall that?

A. Yes.

Q. And you recall you said you didn't know what the new Marlboro-type blend was?

A. No. I mean I recall saying that I didn't know, yes.

Q. In fact, Mr. Tucker had told the board in September what that blend was; hadn't he?

A. I don't remember.

Q. Well why don't you direct your attention back to Exhibit 12493, the presentation to the board of directors. Do you have it, sir?

A. Yes, I do.

Q. Go to the very first page of that exhibit. You're on it now. No, go back, please, sir. "Mr. C. A. Tucker, Presentation to RJRI

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B of D - 9/30/74, Marketing Plans; correct?
A. Yes, sir.
Q. That's Mr. Tucker who you worked with in '75 and '76; correct?

A. Yes, sir.
Q. That's Mr. Tucker who was the vice-president of marketing and sales; correct?
A. Yes, sir.
Q. That's Mr. Tucker who had overall authority to make sure that marketing plans were implemented and carried out by RJR; correct?
A. Yes, sir.
Q. And it is those types of individuals who made presentations in the normal course of events to the board of directors; correct?
A. Yes, sir.
Q. Just like you make presentations to the board of directors; correct, sir?
A. Yes, sir.
Q. And here we see that Mr. Tucker made this presentation to the board of directors on 9/30/74, according to this note; don't we, sir?
A. Yes, sir.
Q. And if you turn to Bates number 1327, --
A. Yes.
Q. -- you'll see at the top he talked about what they were testing with regard to revised and improved blends; didn't he?
A. It says, "In addition, a Camel Filter box will

be test marketed in 1975." Yes.
Q. Well let's go to the next paragraph. "To better compete with Marlboro and Kool in the King Size category, we are presently blind testing revised/improved blends. For Winston King this will be a higher pH factor like that found in Marlboro and for Salem, higher pH and possibly slightly higher menthol level." Correct?
A. Yes.
Q. So Mr. Tucker in September of 1974 had advised the board of directors of RJR Industries; isn't that right? The parent company.
A. Yes, RJR Industries.
Q. And that's the parent company to the tobacco company; correct, sir?
A. Yes, sir.
Q. He had advised that board what type of improved blend was being test marketed; correct?
A. Yes, that's what is in here. Yes.
Q. And you saw this document before you testified here; didn't you?
A. Yeah, I saw the document. I didn't see every page and I don't remember seeing this piece until we covered it right now.
Q. You just didn't remember that page; is that

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right?
A. Well I don't remember seeing it. If I did remember seeing it, I would have told you I remembered seeing it.
Q. So there were marketing documents presented to the board of directors that you were aware of before you testified here; correct, sir?
A. I was aware of this document before I came here and testified, yes.
Q. Direct your attention to Exhibit 13101. Going to jump forward here to 1980, sir. This is a memorandum dated July 22nd, 1980, from G. H. Long to Mr. E. A. Horrigan, Jr.; correct?
A. Yes, sir.
Q. Were you with the company at this time?
A. Yes, I was.
Q. Now how long did you work with Mr. Tucker?
A. I started working with Charlie Tucker in -- like I said before we went to lunch, somewhere in mid-'75 on a project with the sales organization with Mr. Grout. Then I went to work full time in sales in April of '76, so I -- two, three years, I would -- you know, as near as I can remember.
Q. You helped him prepare presentations to the board; didn't you?

A. No, I never helped him prepare a presentation to the board.
Q. You never helped him prepare a presentation to the board of directors?
A. Charlie Tucker?
Q. Yes.
A. Oh, I sure --
I don't remember that. I mean I don't remember a --
Not that I remember.
Q. Well when you think back to the exhibit that was a presentation to the board, does that look like a presentation form that Mr. Tucker would use? Does that refresh your recollection?
A. Well are you talking about the document we've been going through?
Q. Yes.
A. Does that look like a form that he would use to present to the board?
Q. Correct.
A. I -- you know, we're back 20 years now. I don't remember reviewing any of Charlie Tucker's board presentations.
Q. You just don't recall right now; is that right, sir?

A. Well I don't recall.
Q. Okay. Please direct your attention, then, to

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Exhibit 13101.
Mr. Horrigan was the president of the company; correct?
A. Yes.
Q. Mr. Long became the president; correct?
A. Yes, he did.
Q. About two years after this?
A. Yes, I think that's right.
Q. High officials of the company; correct?
A. Yes, sir.
Q. Highest levels; correct?
A. Yes, sir.
Q. And the title is "MDD Report on Teenage Smokers (14 to 17)." Correct?
A. Yes, sir.
Q. Do you know what MDD stands for?
A. As I recall, that stood for marketing development department.
Q. Marketing development department; correct?
A. Yes.
Q. Of RJR Tobacco Company.
A. Yes, sir.
Q. Correct?

A. Yes, sir.
Q. And do you recall testifying earlier today that if you were analyzing brand traces of under-age to project future markets, "I think that's wrong, I think it's frankly stupid, and it shouldn't be done and it's unnecessary?" Do you remember that?
A. I sure do.
Q. Well let's see what Mr. Long and Mr. Horrigan were talking about in this memo. It is a report on teen-age smokers; correct?
A. Yes, it is.
Q. "Attached is an MDD report" --
That means it's a marketing development department report; correct?
A. Yes, sir.
Q. To the president of the company; correct?
A. Yes, sir.
Q. -- "covering the aforementioned subject," which is teen-age smokers 14 to 17; correct?
A. Yes, sir, that's what it says.
Q. And this is six years, roughly, after that board of directors presentation; correct?
A. Yes. Yes, sir.
Q. And you recall that the marketing plan set forth in that presentation to the board said it was for

1975 and ensuing years; do you remember that language, sir?
A. I don't exactly remember it. I'll take your word for it.
Q. And this report goes on and states, "Last January, a report was issued on this subject that indicated that Philip Morris had a total share of 59

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among 14- to 17-year-old smokers, and specifically, Marlboro had a 52 share." Do you see that?
A. Yes, sir.
Q. This is one of those wrong, frankly stupid and unnecessary reports, as you characterized it; correct?
A. That's correct.
Q. And it says, "This latest report indicates that Philip Morris's corporate share has increased by about 4 points; however, Marlboro remains the same at 52." Correct?
A. Yes, sir, that's what it says.
Q. And that's a new report that you characterized as wrong, frankly stupid and unnecessary; correct?
A. Yes, sir. I've said that.
Q. So there's two reports here that are referred to in this document to the president of this company; correct?

A. Yes, sir.
Q. And it goes on to say, "Importantly, the report further indicates that RJR continues to gradually decline, and between the spring and fall 1979 periods, RJR's total share declined from 21.3 to 19.9." Correct?
A. That's -- that's what it says here.
Q. Of teen-age smokers 14 to 17; correct?
A. Yes, sir.
Q. So again, RJR tracking its own market share in a report which you characterize as wrong, frankly stupid and unnecessary; is that right?
A. That's right.
Q. And this was a report that was being referred to in correspondence between the then-president of RJR Tobacco and the future president of RJR Tobacco; correct?
A. Yes, sir.
Q. And how long was Mr. Long the president of RJR Tobacco?
A. I -- I think up until sometime in 1986 or '87. I had gone to the foods company in January of '87, and somewhere in there, I think, Jerry retired.
Q. So Mr. Long, who was tracking teen-age smokers and corresponding concerning it, for smokers between

the ages of 14 and 17, was president of the company from roughly 1982 to 1987; correct, sir?
A. Yes. I -- I think that's roughly correct in terms of dates.
Q. Was he discharging his duties on behalf of the company when he was doing these things?
A. You mean writing the memo?
Q. Yes.
A. He was the head of marketing at this point and he was discharging his duties. I mean --
Q. Carrying them out; correct?
A. Yes.

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Q. Discharging them as best he saw; correct?
A. Yes.
Q. Discharging as best he saw to carry out the objectives of that corporation; correct?
A. Yes, I assume so.
Q. And the same with Mr. Horrigan; correct?
A. I assume so.
Q. And what they saw in the best interests of the corporation was to track smokers 14 to 17 years old; isn't that correct, sir?
A. It appears that way.
Q. Are you ashamed of this one?
A. I'm embarrassed for the company. I think it

was --
It's wrong to track 14-, 17-year-olds, as I said earlier. The core of my ethical con -- beliefs about this business is we do not market cigarettes, develop marketing plans, for people who are under the legal age to buy the product.
This is not a marketing plan. Anybody that developed a marketing plan I would be ashamed of. You get outside that circle and you start doing things like that, I think it's wrong and stupid. I'm embarrassed for the company. I wished, you know --
We don't track 14- to 17-year-olds today. It's my understanding that somewhere in the early '80s, '82 or '3, they stopped collecting this kind of data.
Q. Now, sir, we saw marketing programs directed to these young teen-agers presented to the board of directors by Mr. Tucker who you worked for. We saw that; didn't we?
Q. I am not confident that these were marketing programs directed at people under the age. In fact I have never experienced that going on in the company. We went through very intensely a document that certainly spoke to tracking data, in my -- it appeared to me. With this, we had comments about programs relative to 18- to 24-year-olds in there.

So it is not clear to me that they were talking about marketing to 14-year-olds in the total scope of that document. And in my own experience in working in this company, and back in that timeframe, I never encountered anybody talking about, creating marketing plans or goals to get marketing plans to go to 14-year-olds or 15-year-olds or 16-year-olds.
Q. Were you at the board meeting on September 30th, 1974?
A. No, I wasn't.
Q. And it said, its title, "1975 Marketing Plans Presentation." Didn't it?
A. Yes, it did.
Q. Now if we go back to Exhibit 13101 where the president and future president were talking about 14- to 17-year-old smokers, do you see where Mr. Long advises Mr. Horrigan, "Hopefully, our various planned

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activities that will be implemented this fall will aid in some way in reducing or correcting these trends." Correct?
A. Yes, that's what it says.
Q. And he is telling the president of the company, this future president is telling the president of the company that activities will be implemented in the fall to correct the trend that is reported in the

paragraphs preceding that statement regarding teen-aged smokers 14 to 17; correct?
A. That's what he says.
Q. Now as a person of reason, do you think it's reasonable to assume that those were -- that related to future marketing plans that will be implemented in the fall?
MR. WEBER: Objection, Your Honor. Excuse me. Calls for speculation.
THE COURT: Well you may answer it if you know.
A. I have never seen any documents that relate to marketing plans that tie back to this statement. And I knew Jerry Long very well, Ed Horrigan, when I -- I don't remember them ever talking about developing marketing plans for 14-year-olds. I talked to people who work at the --
Q. Excuse me, sir. Can you answer my question? I know that you want --
MR. WEBER: May he finish his answer, Your Honor?
MR. CIRESI: Your Honor, I object to the witness attempting to give an answer where he's going to try to get hearsay which is not subject to cross-examination.

THE COURT: Try and -- try and --
We want to give you a chance to complete your answer, but try and keep your answer responsive to the question that's asked, please. And his concern about hearsay, he does not want you quoting people that cannot be subject to cross-examination.
BY MR. CIRESI:
Q. Now sir, putting aside what you say was the substance or may have been a substance of what you thought was happening, this memo written in 1980 by Mr. Long talks about marketing to 14- to 17-year-olds; doesn't it?
A. It doesn't talk about a marketing plan.
Q. What do you think "the activities that will be implemented in the fall that will aid in reducing or correcting the trend of a gradual decline for RJR in the 14- to 17-year-old market" refers to?
A. I have no idea.
Q. Nothing comes to mind; correct?
A. I have no idea. I've never in that time experienced or observed or heard of plans that were targeted at 14- to 17-year-olds.

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Q. Nothing comes to mind; correct, sir?
A. I don't know of a plan that was targeted at 14- to 17-year-olds back in this period.

Q. Sir, that wasn't my question.
A. Nothing comes to mind.
Q. Thank you.
Now can you direct your attention to Exhibit 12682.
Now in the 1980s, was there increased scrutiny on the tobacco industry as to whether they were marketing to youth?
A. Increased scrutiny?
Q. Yes.
A. I -- I don't know. I mean there's been -- this has become an ever-increasing issue. To the degree it was more intense in the early '80s than the '70s, I don't remember.
Q. Well it would be fair to state it was more intense in the '80s than it was in the '70s?
A. I guess so. I mean I -- I don't remember.
Q. Now this is a memo to Ms. D. S. Burrows -- from Ms. D. S. Burrows to Mr. P. E. Galyan; correct?
A. Yes.
Q. And is that Diane Burrows?
A. Yes, it is.
Q. And do you know what her title was?
A. No. I know she worked for marketing research.
Q. She worked in marketing research.

A. At that time, yes.
Q. And Mr. Galyan, what was his title?
A. I don't know his title.
Q. Do you know where he worked?
A. He was in marketing research.
Q. Was he Ms. Burrows' superior at that time?
A. I don't know. I don't -- I don't think so, but I really don't know for sure.
Q. And what position did Ms. Burrows go on to attain at the company?
A. I am not --
I mean I can't name the titles that Diane went on to attain. I just know that Diane worked in marketing research. I don't know her titles.
Q. Did she work in marketing during her entire career?
A. I believe so.
Q. Okay. And did Mr. Galyan work in marketing during his entire career?
A. Yes.
Q. Okay.
A. Well I can't say that. As far as I know he did. As long as I've known him he's been in marketing.
Q. Is he still with the company?
A. Yes, he is.

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Q. "MARKETING IMPLICATIONS OF THE NBER MODELS." Do you see that?
A. Yes.
Q. Now we found that that's the National Bureau of Economic Research; correct?
A. Yes.
Q. And you know that's what it was; correct, sir?
A. Pardon me?
Q. You know that's what NBER stands for; correct?
A. Well that's what it says here.
Q. Have you ever heard of NBER before today?
A. No, I haven't.
Q. "The attached memo" --
MR. CIRESI: Excuse me. Your Honor, we'd offer Exhibit 12682.
MR. WEBER: No objection, Your Honor.
THE COURT: Court will receive Exhibit 12682.
BY MR. CIRESI:
Q. Now this is two years after the memo from Mr. Long and Mr. Horrigan; correct?
A. How many months did you say?
Q. Excuse me. Two years after.
A. Oh, okay. Yes, right.
Q. Eight years after the report of Mr. Tucker to

the board; correct?
A. Yes.
Q. "The attached memo summarizes the findings of the National Bureau of Economic Research on the relative price sensitivity of age/sex groups, per your request." Correct?
A. Yes, that's what it says.
Q. Fair to state that Ms. Burrows was responding to a request from Mr. Galyan?
A. That's what I assume.
Q. Have you seen this document before?
A. Ah, gee, I don't -- I don't remember this one. I may have, but I just can't remember -- I don't remember it.
Q. Okay. Let's go on to the next paragraph. "A key finding is that younger males are highly sensitive to price." Do you see that?
A. Yes.
Q. Do you recall my asking you earlier today --
MR. WEBER: Objection.
Q. -- whether or not --
MR. WEBER: May I object to that last statement? I think unless I misheard, the word "adult" was left out.
THE COURT: Counsel, just state your

objection, please.
MR. WEBER: I think there was a misstatement of that sentence, Your Honor.

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THE COURT: The objection is sustained. Reread the question -- or restate the question, counsel.
Q. It states, "A key finding is that younger adult males are highly sensitive to price;" correct?
A. Yes.
Q. Do you recall earlier today I asked you whether or not younger people are more price sensitive?
A. Yes.
Q. Do you --
A. I thought -- I thought you were asking me about people under the legal age to buy the product.
Q. Oh.
A. Well you said "young people." This says "younger adult males."
Q. And we saw in the previous memorandum to the board that younger adults were defined as 14 to 18; didn't we? Fourteen to 24. Excuse me.
A. In the previous board presentations I -- I saw things about 14 to 24. I also saw at least one thing in there about 18 to 24.
Q. Well is it --

Is an 18-year-old price sensitive and a 17-year-old, eleven months, 364 days, not price sensitive?
A. I have no idea.
Q. No way to know one way or the other; isn't that right?
A. There's no way to know unless you did market research on 17-year-olds, which we have never done that I know of.
Q. These documents did come from RJR; didn't they?
A. Yes.
Q. "This suggests that the steep rise in prices expected in the coming months could threaten the long term vitality of the industry, by drying up the supply of new/younger adult smokers entering the market." See that?
A. Yes.
Q. And what's "drying up the supply" referring to, in your judgment?
A. I -- I don't know. I --
Q. Well it's --
A. I guess it's saying that less people smoke, the prices go up.
Q. It's new/younger adult smokers drying up; isn't that right?

A. Well that's what it says.
Q. And of course to sustain the industry, you need new smokers coming in as some die; don't you? Or quit.
A. What do you mean by "new smokers?"
Q. New starter smokers.
A. Are you asking me about the theory that we need to get kids to start smoking to replace smokers

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before --
You know, is that what you're asking me?
Q. Let me repeat the question. To sustain the industry, you need new smokers coming in as some die or quit; correct?
A. Well, if you were to have volume 10 years from now, you'd have to have people smoking, and you have to have people starting smoking in order to have people smoking in the future.
Q. So your answer would be yes.
A. Yes.
Q. Thank you.
Now do you know how many smokers start before the age of 18?
A. The only thing I know is the government reports that are publicized, they talk about three thousand under-age smokers start smoking a day, I believe is

the statistic that is frequently reported.
Q. Do you know if RJR tracked the number of smokers who start before the age of 18?
A. We don't track under-age smokers today. Back in the Jerry Long memo that we were talking about earlier there was an attachment to that memo that had tracking of under-age smokers, and my understanding is that the company stopped tracking those under-age smokers somewhere in the early '80s, like 1982 or '3.
Q. Who told you that?
A. Our head of con -- consumer research today, Doug Weber. I talked to him. And when I started seeing these memos, I asked him where did this data come from, when did the company, to your -- best of your knowledge, start collecting this data, when did it stop.
Q. How long has Mr. Weber been with the company?
A. Long time. I think Doug's probably back in the mid, late '70s, is my best guess when he started with the company.
Q. Did he work with Mr. Tucker?
A. Well he was in the marketing research group. He never reported to Mr. Tucker. Back in the '75, '76 -- in that period, Doug would have been a junior person in the marketing research group. I think he

started with the company back about the same time I did, give or take a year or so.
Q. All right. Let's take a look, then, at this document in 1982. "This suggests that the steep rise in prices expected in the coming months could threaten the long term vitality of the industry, by drying up the supply of new/younger adult smokers entering the market. It could also undermine the long range growth potential of brands which rely on new/younger smokers, including Marlboro and Newport." Correct?
A. Yes, that's what it says.
Q. And we know that, from the Horrigan/Long memo,

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that about 52 percent of Marlboro's market, as reported by Mr. Long, was in the 14 to 17 year group; correct?
A. I believe that's what that previous document said.
Q. And that RJR's percentage of that market had dropped from roughly 21 plus percent to 19 plus percent; correct?
A. I believe that's what it said, yes.
Q. Now you would agree that as smokers move up in age, if they continue to smoke, they smoke more; correct?

A. I've heard that. That I -- I think -- I remember --
What I heard or understand is as you get older you might smoke more, then you sort of plateau out. I don't think it keeps increasing forever.
Q. Well --
A. So I -- you know, I've never done any studies on that. Just things --
Q. RJR has; haven't they?
A. I've never seen any.
Q. And you've never had a report to you as the CEO that smokers in the 20 to 24 age group smoke more than those younger?
A. I don't recall seeing one.
Q. Let's look at the next paragraph. "There is no reason to assume that price makes the idea of smoking less appealing to younger adults. But price may create a barrier which prevents that appeal from developing into an ongoing choice to become a smoker." Do you have any idea what that means?
A. I -- it sounds like --
I haven't seen this before, but it sounds like it's being theorized here that if the prices are higher, somebody won't smoke.
Q. Means that as people move up in age, they may

not smoke; doesn't it, sir?
MR. WEBER: Object, Your Honor, it's asked and answered. I'd also object under 602, which says a witness may only testify as to information as to which he has personal knowledge, and he said he doesn't have it on this.
THE COURT: You may answer the question.
A. It -- I --
Look, I've just seen this. It sounds to me like if the price is too high, then people won't smoke or won't continue to smoke.
Q. Has nothing to do with age as far as you can tell; correct, sir?
A. Well it's also referencing, you know, younger smokers in here, younger adult smokers -- or younger adult males I guess is really what this says.
Q. Goes on to say, "RJR has an opportunity to break this price barrier with a brand targeted to younger

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adult males, the most sensitive group." And then it sets forth three approaches; correct?
A. Yes, it does.
Q. "A younger -- new younger adult male brand which offers imagery combined with lower price;" correct?
A. That's what it says.
Q. "A larger, economy size pack of a new or

existing brand;" correct?
A. Yes.
Q. "Marketing 'half-packs' of a new or existing younger adult male brand, in addition to the 20's." Correct?
A. That's what it says.
Q. And RJR marketed such half-packs; didn't they, sir?
A. Half-packs?
Q. Yes.
A. I don't recall marketing, selling, you know, in a retail outlet, the company selling half-packs.
Q. Do you promote them?
A. Do we promote them?
Q. Yes.
A. I know -- I think I know or remember back when sampling was a big deal, they might have -- well maybe 10's and 12's. I don't remember specific marketing plans of promoting 10's and 12's.
Q. Ms. Burrows recommended the half-packs because they're a logical size for beginner smokers; correct, sir?
A. That's what Ms. Burrows theorizes here.
Q. And beginner smokers, you said, according to some government surveys, were by and large under the

age of 18; correct?
A. If that's what government surveys say, I will have to go along with that.
Q. And you know that RJR tracked that; correct?
A. They -- as I testified earlier, through the NFO system they were tracking under-age smokers up through, I believe, 1982 or 1983.
Q. And younger smokers, according to Ms. Burrows, seem more sensitive to cash outlay than cost per cigarette; correct?
A. That's her theory.
Q. And you don't think that's accurate; is that right, sir?
A. I think it's her theory. I have no -- you know, I have no way of responding to this.
Q. Well let's go on to Exhibit 12683. 12683.
Do you have that, sir?
A. Yes, I do.
Q. Same date, September 27th, 1982; correct?
A. Yes, it is.
Q. And it's --
This one is to Mr. Moore; correct?
A. Yes. Jerry Moore.

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Q. And what was Mr. Moore's title?
A. I don't remember Jerry Moore's title at this

point.
Q. What department was he in?
A. He was in marketing research.
Q. Do you know who Mr. Hribar was?
A. John Hribar was in marketing research.
Q. Do you know who Mr. Doten was?
A. I don't remember that one.
Q. Do you know who Mr. Davis was?
A. I don't remember Davis.
MR. CIRESI: Your Honor, we offer Exhibit 12683.
MR. WEBER: No objection, Your Honor.
THE COURT: Court will receive 12683.
BY MR. CIRESI:
Q. Now this is a memo from Ms. Burrows to Mr. Moore, as we stated, and it's entitled "NBER MODELS OF PRICE SENSITIVITY BY AGE AND SEX;" correct?
A. Yes.
Q. And in this memorandum Ms. Burrows reports to Mr. Moore that in 1981 the National Bureau of Economic Research published two models based on consumers' responses to government smoking surveys; correct?
A. Yes.
Q. And in the second paragraph she states, "The

NBER" -- and I have a hard time making that out, sir. The next word after that is -- "may not reflect the exact effects of price increases, since their models didn't deal with change over time." Do you see that?
A. Yes.
Q. "However, the effects they found for other variables (race, income, working women, et cetera) are highly consistent with our understanding of marketing -- market dynamics." Correct?
A. That's what it says.
Q. "Thus, it is likely that the NBER model had correctly identified relative price sensitivity among age/sex groups;" correct?
A. That's what it says.
Q. And then there's a summary of the findings; correct?
A. Yes.
Q. And it says, "According to the NBER models:
"Teenagers and younger adults are highly price sensitive." Correct?
A. That's what it says.
Q. And down below they show the NBER price elasticity among certain age groups; don't they?
A. Yes.
Q. And the first group is teen-agers 12 to 17 years

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old; correct?
A. Yes.
Q. And this is another example of a report from somebody in the marketing department dealing with the tracking of youth; correct, sir?
A. It --
They were tracking 12- to 17-year-olds in this document.
Q. And this is another document that you would think was wrong, frankly stupid, shouldn't be done, and unnecessary; correct?
A. That's right.
Q. And indeed, the CEO of RJR Industries -- excuse me -- RJR Nabisco has testified that it would be illegal, unethical and immoral; correct?
MR. WEBER: Let me object to the characterization of the testimony from someone else, Your Honor.
THE COURT: You'll have to rephrase that, counsel.
MR. CIRESI: Sure.
BY MR. CIRESI:
Q. Are you aware that Mr. Goldstone, your superior, testified in Congress on January -- I think it was 29th of this year?

A. Yes, I am. I watched a good part of it.
Q. You did.
A. Uh-huh.
Q. And you watched what he said about marketing to youth; didn't you?
A. Yes.
Q. And he said it was illegal, unethical and immoral; didn't he?
A. That's what he said. If -- if --
If that's what was going on, he said that's what it would be.
Q. Illegal, unethical and immoral; correct?
A. If that's what was going on, he said that would be his view of it.
Q. And the occasion of his testimony in Congress was with respect to a proposed settlement; correct?
A. Yes.
Q. Now if you go over to the next page, you'll see the conclusions, and Ms. Burrows makes a statement here about what the effect would be of the loss of younger adult males regarding loss to price sensitivity; correct?
A. Yes. You're talking about the last paragraph?
Q. Yes.
A. Yes.

Q. And she also mentions teen-agers; doesn't she?
A. That's what it says, yes.
Q. "...the loss of younger adult males and teenagers is more important to the long term, drying

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up the supply of new smokers to replace the old." Correct?
A. Yes, that's what it says.
Q. "This is not a fixed loss to the industry: its importance increases with time." Correct?
A. That's what she's saying here.
Q. Because you look at people when they start, and expect to keep some of them due to brand loyalty, and look at what they might generate in revenue over a long period of time; correct, sir?
A. I've never seen a study like that.
Q. That's what's being referred to here; isn't it, sir?
A. You -- you're drawing that conclusion. I don't know what Diane is referring to. It appears to be that. You'd have to talk to Diane.
Q. "In ten years, increased rate per day would have been expected to raise this group's consumption by more than 50 percent." Correct?
A. That's what she has here.
Q. And that means as people get older, as I asked

you earlier, they smoke more as they get older, up to a point; don't they, sir?
A. My understanding is that you -- as you get older, you'll smoke more versus when you were younger, until you get up to a certain point and you kind of stay there. My experience with cigarettes is that people are fairly stable in their consumption; you smoke a pack a day, a pack and a half a day, or half a pack.
Q. Do they start --
Do teen-agers start with a pack a day?
A. I -- I have never done any research on teen-age smoking, so I don't know how much teen-agers smoke and consume in terms of cigarettes.
Q. Is --
A. I'm telling you about my experience with smoking.
Q. So as the CEO of RJR Tobacco, you don't know whether, when teen-agers smoke, they start smoking a pack a day or maybe they have a couple cigarettes.
A. Oh, I wouldn't think somebody that's starting to experiment with smoking is starting with a pack a day.
Q. What do they start with, one, two cigarettes?
A. I -- I don't know. I guess it varies. It could

be one, it could be two, it could be whatever. I've never done research on the smoking behavior patterns of -- of somebody that's 14 years old.
Q. And as they continue to smoke, if they do, they tend to smoke more, don't they, than the one or two cigarettes?
A. I suppose if you started with two cigarettes a day, you decide to become a smoker, you'd be smoking more than two cigarettes a day somewhere in the

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future.
Q. And that's what's being referred to here by Ms. Burrows; correct, sir?
MR. WEBER: Objection, Your Honor, it's been asked and answered. And also under 602, he said he has no personal knowledge. Calling for speculation.
THE COURT: You may -- you may answer the question.
A. I --
THE COURT: If you know. If you can understand, you can give us your interpretation of it.
A. I don't know what Diane's talking about. You need to ask Diane.
Q. Okay. So let me just make sure I'm clear on

this. You don't have any idea what she's talking about when she writes about "the loss of younger adult males and teenagers is more important to the long term, drying up the supply of new smokers to replace the old."
A. I understand --
Q. "This is not a fixed loss to the industry: its importance increases with time. In ten years, increased rate per day would have been expected to raise this group's consumption by more than 10 percent -- 50 percent." Excuse me.
A. Well that's what she's saying here.
Q. And you said you don't know what she's talking about.
A. Well --
Q. Correct?
A. -- I know that's what she's saying here.
Q. And you don't have any idea what that's referring to; correct?
A. She's talking about increasing rate per day. It's very literal here. And what you're asking about is a memo she wrote 16 years ago --
Q. Yes.
A. -- that I just saw here today.
Q. Yes. It is very literal; isn't it, sir? Isn't

it?
A. It looks that way to me.
Q. One can only draw, if one were being reasonable, one conclusion from what she is saying; isn't that right?
MR. WEBER: Objection, Your Honor, it's continuing to call for speculation.
THE COURT: No, you may answer.
Q. Isn't that right, sir?
A. What's the question?
Q. I'll give it back to you.
One can only draw, if one were being reasonable, one conclusion from what she is saying; isn't that right?

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A. What's the -- she's --
The conclusion that you would draw from this, it appears, is Diane is talking about increasing rate per day over time in this memo.
Q. And that it would affect the corporation over the long time if that supply of new smokers dries up; correct?
A. That appears to be what Diane is saying here.
Q. Can you direct your attention, please, to Exhibit 12579.
A. Yes, I'm there.

Q. This is a 1984 memo by Ms. Burrows; correct?
A. Yes.
Q. Two years later; correct?
A. Yes.
Q. It's to Mr. Long, the president; correct?
A. Yes, it is.
Q. Now sir, from 1982 to 1984 did RJR adopt a code word for teen-agers?
A. Code word?
Q. Yes.
A. I don't know of any code word for teen-agers.
Q. Now the copy list here, it goes to a number of individuals; correct?
A. Yes.
Q. Do you recognize a number of them?
A. Yes, I do.
MR. CIRESI: Your Honor, we would offer Exhibit 12579.
MR. WEBER: No objection, Your Honor.
THE COURT: Court will receive 12579.
BY MR. CIRESI:
Q. Sir, this is entitled "RJR SECRET." Do you see that?
A. Yes.
Q. "STRATEGIC RESEARCH REPORT."

A. Yes.
Q. Again, this would be of limited distribution and access; correct?
A. Yes. Although there seems to be a pretty wide limit on this cover sheet.
Q. And depending upon the nature of the report, it may go to more or less people; correct?
A. Yes.
Q. All those who have a need to know; correct?
A. I would assume so.
Q. And this is "YOUNGER ADULT SMOKERS: STRATEGIES AND OPPORTUNITIES;" correct?
A. Yes, that's what it says.
Q. Now I think you said Mr. Long at this time was president?
A. Yes, he was president at this time.
Q. And who's Mr. Orlowski?
A. That's Marty Orlowski. He was -- or he's the -- I think he was the head of marketing at this point in

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time.
Q. Mr. Lees, do you know who he was?
A. One of the senior people in marketing.
Q. And we look down at the copy list starting with Mr. Hall, Ms. MacKinnon, are those folks involved in marketing and production?

A. Yes, Larry Hall, that's L. W. Hall --
Do you want me to go down the list here?
Q. If you can just generally answer my question.
A. Oh, yes. Generally, yeah, yeah, they were in marketing.
Q. Okay. And high officials, some of them?
A. Could you define "high officials?"
Q. Well what's a high official in RJR in 1984?
A. I've never used the term. That's why I'm asking you.
Q. Department heads?
A. High management, I would say, is vice-president and above. Senior management, executive management.
I don't remember everyone's title here, but we had senior people in marketing and the president of the company that this report went to.
Q. All right. So it went to senior people within the company all the way up to the president. Fair?
A. Yes.
Q. Now if you go to the next page, sir, do you see where "Key recommendations include:
"Establishment of a separate younger adult smoker program/unit...?"
A. Yes.
Q. And in second --

If you go to the next page, then, you'll see a table of contents; correct?
A. Yes.
Q. And we see that section one is "THE IMPORTANCE OF YOUNGER ADULT SMOKERS;" correct?
A. Yes.
Q. "SUCCESSFUL 'FIRST BRAND' STRATEGIES OF THE PAST;" correct?
A. Yes.
Q. "KEY LEARNING -- SUMMARY AND CONCLUSIONS;" correct?
A. Yes.
Q. "IMPLICATIONS FOR RJR;" correct?
A. Yes.
Q. And "KEY TREND DETAIL;" correct?
A. Yes.
Q. Now if we go to the next page, you got a management summary; correct?
A. Yes.
Q. And now we see younger adult smokers defined as 18 to 24. Do you see that?
A. Yes, I do.
Q. Uh-huh. And in 1984 younger adult smokers were used as a code for people under the age of 18;

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weren't they, sir?

A. No.
Q. You deny that.
A. Yes, I deny that.
Q. And do you know if The Tobacco Institute, pursuant to requests from the tobacco companies, including RJR, stated that they feel strongly that cigarette smoking is an adult custom?
A. Yes.
Q. And they said that they should not -- one should not consider until they've reached the age of majority; correct?
A. Yes.
Q. And the age of majority that The Tobacco Institute said was the appropriate age was anyone over the age of 21; correct?
A. Well I'm not sure what document you're referring to at this point.
Q. Well you had heard that The Tobacco Institute had said that. You just testified --
A. Well --
Q. Isn't that right, sir?
A. I --
Yes.
MR. CIRESI: Well may I approach, Your Honor?

Q. Let me just refresh your recollection.
MR. WEBER: May I see the document, Your Honor, before it's shown to the witness?
(Document handed to Mr. Weber.)
(Document handed to the witness.)
Q. Sir, I've handed you a document -- I just want to refresh your recollection with it.
MR. WEBER: Is this in evidence, counsel?
MR. CIRESI: No. I'm refreshing his recollection. He said he heard it and I want to refresh his recollection, Your Honor.
THE COURT: You may use it to refresh his recollection.
A. I've never seen this.
Q. Sir, please, it's Exhibit 13957. Do you see that?
A. Yes.
Q. All right. If you could, please, go to page two.
And by the way, this was a 20/20 telecast on October 20th, 1983; correct?
A. Yes.
Q. All right. And if you go to page two, you'll see that the R. J. Reynolds Company and Philip Morris and Brown & Williamson told 20/20 to talk to The

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Tobacco Institute with regard to the health hazards of smoking. Do you see that?

MR. WEBER: Your Honor, I'd object to any use of refreshing recollection with the document that the witness says he hasn't seen before. That's not appropriate for refreshing recollection. And it also isn't the issue -- this question also doesn't relate to the issue that the refreshment would.

THE COURT: This question certainly doesn't. I just assume it's preliminary --

MR. CIRESI: It is preliminary.

THE COURT: -- to whatever your question is going to be.

MR. CIRESI: Yes.

THE COURT: All right. Go ahead.

Q. Do you see that, sir?

A. You have --

Could you start over again?

Q. Third from the bottom, the reporter, Mr. Stassel --

A. Yes. Says, "The growing evidence...?

Q. That's right.

A. All right.

Q. If you just take a look through, you'll see that RJR, together with Philip Morris, Brown & Williamson

and Lorillard, were asked to appear on the program, and they said the Tobacco Institute would speak for them, and Arne Browder would speak; correct?

A. That's what this says, yes.

Q. All right. Now if you go on to the next page, and this is what I want to use to refresh your recollection, I wanted to show you what the names were. If you go to page three.

And you said that The Tobacco Institute and the industry -- and the industry had said that smoking is an adult custom.

Now do you see there where Mr. Browder says, "We feel very strongly that cigarette smoking is an adult custom that one should not even consider until they've reached the age of maturity.

"Stassel: What's maturity?

"Browder: Anyone over the age of 21."

Do you see that?

A. Yes.

Q. Does that refresh your recollection that the industry in 1983 was stating, through its public spokesmen, that the age of majority for smoking was anyone over the age of 21?

A. I don't believe that this individual was speaking for the industry or for R. J. Reynolds

Tobacco Company when he said 21. The legal age for purchasing product in the country today in every state is 18 years old, it's not 21. So I don't know anything about this document or this interview 15 years ago. I just saw this today.

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Q. Who pays for The Tobacco Institute?
A. The industry.
MR. WEBER: Objection, Your Honor, he has said it didn't refresh his recollection.
THE COURT: Okay. Well he's answered it. You cannot use it to refresh his recollection any more, but he may answer who pays for The Tobacco Institute.
Q. Who pays for The Tobacco Institute?
A. The tobacco companies.
Q. And in 1983, what percentage of the market, roughly, was RJR?
A. Probably about 30 -- maybe 31 percent or so.
Q. Thirty-one percent. So you would be paying 31 percent of the budget for The Tobacco Institute at that time; correct?
A. I believe so.
Q. Now if we could go back, then, sir, to Exhibit 12579, the RJR secret strategic research report.
A. Yes, I'm there. I believe. Yes.

Q. And if we go to the management summary.
Now in 1984 there was ever-increasing scrutiny on the industry with regard to selling to youth; wasn't there, sir?
A. I -- I don't know if there was ever-increasing. There's always been issues and scrutiny with regard to marketing cigarettes to people of legal age and not to people of under-age. So I don't know how to give you a thermometer measure of the increasing scrutiny in 1984.
Q. You said it increased over time; didn't you?
A. It has certainly increased in the time that I've been at the senior level in '89 and '90 and '91 and up to the present. I don't know the pulse rate or the thermometer reading back in 1984.
Q. The pressure or the scrutiny was more intense in '84 than it was in '74; wasn't it, sir?
A. I suppose so.
Q. And in '74, internal documents were written differently than they were in '84; weren't they?
A. We went through a document earlier that made references to 14- to 17-year-olds. It also had a reference in there to 18- to 24-year-olds, at least one that I saw.
Q. Is your answer yes?

A. So, you know, they're -- in --
I told you earlier yes, --
Q. Thank you.
A. -- in 1983 we stopped tracking studies on 14- to 17-year-olds.
Q. In 1984 memos were written differently than they were in 1974; weren't they, sir?
MR. WEBER: Your Honor, let me object to that, it's so vague. Of course things were written differently.

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THE COURT: Well I think he's already answered the question "yes." Your objection should be it's been asked and answered, and on that basis I'll sustain it.

MR. WEBER: I'll gladly accept your suggestion, Your Honor.

MR. CIRESI: And I will move on, Your Honor.

THE COURT: Move on.

BY MR. CIRESI:

Q. And sir, do you see here where it says, "The renewal of the market stems almost entirely from 18-year-old smokers?" Is that right?

A. That's what it says.

Q. So that as soon as somebody turns 18, that's

where the renewal of the market starts; is that right?

A. She's -- you're asking --

She says the renewal market at 18. I mean that's her point she's making here.

Q. And she also made the point in this memo that --

Well let me ask you this: Did you read this memo?

A. I have seen the memo. I have not --

In previous depositions and so forth I have seen pieces of it. I have not gone through and read this entire document, no.

Q. Do you know if, in this memorandum, Ms. Burrows points out that more than two-thirds of male smokers start by age 18?

A. I -- you're asking me if I specifically remember that?

Q. Yes.

A. I can't say that I do.

Q. Can you go to Exhibit 8 -- I'm sorry, Bates number 8526. Again I'm only using the last four numbers.

A. I got you.

Q. And you'll see it says "APPENDIX B" at the top.

A. Yes.

Q. And this is some data that Ms. Burrows put in which came from the Department of Health, Education and Welfare; correct?

A. Yes. That's what it says at the bottom, yeah.

Q. And it shows the "YOUNGER ADULTS' IMPORTANCE AS REPLACEMENT SMOKERS;" correct? That's the title that she puts on her document; correct?

A. That's what it says, yes.

Q. And then she puts in statistics that she got from the Department of HEW; correct?

A. Yeah. Yes.

Q. And the ages are 13, 14, 15, 16, 17, and then 18 through 24; correct?

A. Yes.

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Q. And actually, when she goes down to the current male smokers, the age starts at 12; correct?
A. Yes.
Q. And she states that more than two-thirds of male smokers begin smoking by the age of 18; correct?
A. Yes.
Q. What would happen to your profits if 68.7 percent of your market was eliminated?
A. They would go down a lot. I mean obviously if you were selling 68 percent less cigarettes, you'd

be --
Q. Overwhelming reduction in your profits.
A. Sure would, yes.
Q. Usually companies would be concerned about a loss of 68.7 percent of their market; wouldn't they?
A. Yes.
Q. Fair statement; isn't it?
A. That's a fair statement.
Q. They'd want to see if they could do anything to keep that 68.7 percent of their market; wouldn't they?
A. Yes.
Q. They might want to have programs that were directed to allure that percentage of their market to the product; wouldn't they?
A. Yes.
Q. They'd want to have promotions that would bring that percentage of their market in; wouldn't they?
A. Yes.
Q. They'd want to cater to that large percentage of the market; wouldn't they?
A. Yes.
Q. They'd want to influence that large of a percentage of the market; wouldn't they?
A. Of course. If what they were selling to and who

they were selling to was of a legal age to buy the product.
Q. Now sir, not too long after this memorandum, the Joe Camel preliminary campaign started; didn't it?
A. This memo was in -- well '84, and I believe Joe Camel was launched in the marketplace in '88.
Q. In the marketplace launched, but there was preliminary studies before that; wasn't there, sir?
A. I'm sure there were.
Q. Can you direct your attention to Exhibit 12811.
A. Yes, I'm there.
Q. It's a marketing research report dated February 1, 1985; correct?
A. Yes, it is.
Q. Approximately one year after the memo that we just looked at; correct, sir?
A. Yes. Yes, sir.
Q. It's entitled "CAMEL YOUNGER ADULT SMOKER FOCUS GROUPS;" correct?
A. Yes. That's what --

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MR. CIRESI: Your Honor --
A. Yes, that's what it says.
MR. CIRESI: Your Honor, we would offer Trial Exhibit 12811.
MR. WEBER: No objection, Your Honor.

THE COURT: Court will receive 12811.
BY MR. CIRESI:
Q. We see the title, it's "CONFIDENTIAL;" correct?
A. Yes.
Q. Restricted access?
A. Sure. I would assume so.
Q. And the title or --
It's to Mr. Caufield. Do you know who Mr. Caufield is?
A. Yes. He worked in marketing back then.
Q. And what was his title?
A. At this point I'm not sure if he was brand manager, assistant brand manager. I just -- I really don't remember.
Q. And it's from Mr. Alicia Nance Mitchell; correct?
A. Yes.
Q. And do you know what Ms. Mitchell's title was?
A. No. I don't recognize that name.
Q. Okay. And do you know who Mr. Hall is?
A. Larry Hall.
Q. What was his title?
A. You know, I am not sure. He --
At one point in his career he was the head of marketing research. I -- I'm guessing that that's

what his title was at that point.
Q. And Mr. Cox, Mr. Murphy?
A. That's Alan Cox and Dan Murphy, and they were managers in -- in marketing research.
Q. And Mr. Winebrenner?
A. John Winebrenner was in brand management, not in marketing research. He was one of the brand management heads. And I'm not -- I do not remember his title at this point. Probably a director title.
Q. And Mr. Baker; correct?
A. Yes. I don't know who Mr. Baker is.
Q. If you go to the second page, sir.
A. Is this 5738, Bates number?
Q. It is.
A. All right.
Q. And do you see here its --
There's a "BACKGROUND" section?
A. Yes.
Q. And you see that it states, "Due to the importance of younger adult smokers, Camel has developed a new advertising campaign which is directed solely towards this group." Do you see that?
A. Yes.
Q. "Although the new campaign is very different

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from the current campaign, it was developed to supplement but not replace the Camel World Campaign." Correct?
A. That's what it says.
Q. And then it states, "Management requested that the Younger Adult Campaign be taken to focus groups in order to obtain consumer reaction to the new ads." Correct?
A. Yes.
Q. And that "six groups (four male and two female) were conducted in order to obtain qualitative consumer feedback about the ability of the ads to catch one's attention and the overall appeal;" correct?
A. Yes, that's what it says.
Q. Now do you know if the people that this was shown to were the younger adults which were now being described as 18 to 24?
A. No, I don't know who was in those focus groups. I'm very confident that they were at least 18 and older.
Q. That would be your assumption; correct?
A. Sure would.
Q. All right. Can you turn your attention, then, to the next page, 5739.

A. Yes, I'm there.
Q. And do you see the French Camel?
A. Yes.
Q. That was the predecessor to the Joe Camel; wasn't it?
A. I guess so. I know, you know --
Q. Came from France; correct?
A. Well it's the French Camel.
Q. Yeah. And RJR first used it in France; correct?
A. That's my general understanding, yes.
Q. And here's what's said about this particular French Camel. "These ads were well received due to the fun/humor aspects of the cartoons. More than any other theme, the 'French Camels' appeared to attract the respondents' attention. The main drawbacks of these executions were that: one, they may be more appealing to even -- an even younger age group...;" correct?
A. Yes, that's what it says.
Q. What age group? Younger than what?
A. Well I assume that they're referring --
I'm assuming what they're referring to is younger than 18.
Q. Okay. And let's assume that this was to 18-year-olds, this focus group. All right? So

they're talking about ones even younger than 18;

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correct?
A. I -- I assume that. I wasn't there at these focus groups, but that appears to be what this is suggesting.
Q. And this is a report, then, to the head of the marketing department back in 1985 conducted pursuant to management's request to determine what type of campaign designed to solely catch the younger adults' attention, and it was reported that Joe Camel would appear to appeal to younger people; correct?
A. You said this was a report to the head of marketing?
Q. Didn't you say you thought at this time Mr. Hall was the head of marketing?
A. No, I -- I --
You asked me what I thought Mr. Larry Hall's title was, and I said I remembered along the way he was the head of marketing research --
Q. Okay.
A. -- in his career, and I'm not sure what his title was. I do remember he was head of marketing research.
Q. So this is a report conducted pursuant to requests by management, the head of marketing

research, stating that Joe Camel would appeal to children under the age of 18; correct?
A. No, I think this says that the French Camel may have possible appeal to a younger age group, which I'm assuming they mean younger than 18. But it doesn't talk about Joe Camel here, it talks about the French Camel.
Q. Well the French Camel became Joe Camel; did it not, sir? You just said that.
A. Well, but I don't remember what the French Camel execution looked like. And you've used "Joe Camel," this says the French Camel. It says it here very clearly that the French Camel ads could possibly appeal to people younger than 18, I -- or you have to assume that's what they're referring to.
Q. And how much money, from the time the Joe Camel campaign was launched in 1988, did RJR put in to the Joe Camel campaign?
A. I don't know. I mean I'd have to go back and add up those numbers.
Q. Hundreds of millions of dollars?
A. Yes, there would be hundreds of millions of dollars put into the marketing of Camel brands.
You said since 1988?
Q. Since the launching of Joe Camel on the 75th

anniversary --
A. Yes.
Q. -- of Camel cigarettes.
A. Yeah.
Q. Billions of dollars; correct?
A. Yeah. Probably is, yeah.

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Q. Do you know how much RJR spent on youth prevention between 1983 and 1994?
A. Not from '83. From '91 --
I'm sorry, did you say '83 to '94?
Q. Correct.
A. The youth prevention program that I'm familiar with was called Right Decisions Right Now, it's in middle schools throughout the country, that started in 1991 and continues today, and also in that late '91, '92 period we started a program for retailers called Support the Law.
Q. Sir --
A. The amount of money? Probably couple three, four million dollars --
Q. Couple --
A. -- during that period.
Q. -- three, four million dollars.
A. I'm not exactly sure of those numbers.
MR. CIRESI: May I approach, Your Honor?

Q. Let me show you an exhibit that has been previously marked, sir, as Exhibit 20177, and it's youth prevention expenditures of R. J. Reynolds Company from 1983 to 1994. Can you see it?
A. Yes.
Q. Okay. And the little sliver in red there, that's youth prevention. Do you see that?
A. Yes, I do.
Q. Nineteen million ninety-nine dollars -- ninety-nine thousand six hundred seventeen dollars, do you see that?
A. Yes, I do.
Q. And then we compared that to advertising, marketing and promotion expenditures during the same period of time. Do you see that?
A. Yes, I do.
Q. And that number is 6,132,810,796 dollars. Do you see that?
A. Yes.
Q. These came from answers to interrogatories that your company provided. Do you accept those numbers?
A. If they came from the company, I would, you know, assume they're right and I would accept them.
Q. Okay. So during the period 1983 to 1994 R. J. Reynolds Company spent approximately, what, one-tenth

of one percent on youth prevention that it spent on advertising, marketing and promotion; correct?
A. That's what that chart has on there.
Q. And during the time that the Joe Camel campaign was in existence, you spent billions on that; correct?
A. Are you referring to the advertising campaign?
Q. Promotion, advertising, yes.
A. I'm guessing here, but total marketing budget including discounting dollars to promotion, everything over that 10-year period, it

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probably -- at about 200 million a year or 180 to 250, so it could be two billion dollars in total marketing over a 10-year period.
Q. And I think you said that youth prevention that you were aware of was about four million?
A. Well I was referring to a period, you know, in '91, starting with Right Decisions Right Now and Support the Law program that I'm familiar with in that timeframe since '91 through '94.
Q. Now Joe Camel caused people to start smoking; didn't it?
A. Um --
Q. Camel cigarettes.
A. Joe Camel caused people to start smoking?

Q. Camel cigarettes.
A. No, Joe Camel -- or I --
Camel campaign, Joe Camel, I don't believe, has -- or any marketing advertising, for that opinion, has anything to do with people starting to smoke.
Q. Okay. So no advertising campaign causes people to start smoking Joe Camel; correct?
A. I don't believe the Camel campaign or any marketing advertising causes someone to start smoking. I believe smoking behavior is a peer influence, parental environment, social environment behavior. I don't believe somebody drives down the street who has decided not to smoke, looks at a billboard and says, "You know, I think I'm going to start smoking, and I think it's going to be Camels."
Q. Okay.
A. And just totally ignores all of their social environment and goes off and starts smoking because of an ad on a billboard or in a magazine. I just don't believe that.
Q. All right. And you also believe that no one driving down the street, looking at billboards, having everything else in mind, would switch from a Marlboro to a Camel based on the Camel campaign;

correct?
A. I think that, you know, once you've made a choice to smoke, I think that a marketing campaign and a product design can have some impact on somebody switching brands -- (clearing throat) excuse me. But your first question was about starting to smoke. I think a marketing campaign can influence brand choice and influence brand switching.
Q. So that all of these advertising dollars, they would cause somebody to switch to a brand, but they wouldn't cause anybody to start smoking.
A. I don't believe --
Q. Is that what you're saying?
A. Yes. I don't believe advertising causes somebody to take up smoking behavior.
Q. Can you direct your attention to Exhibit 12979.

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A. Yes, I'm there.
Q. Now that's entitled "VOLUME IMPACT OF CAMEL YAS GROWTH." Correct?
A. Yes.
Q. It's an R. J. Reynolds document; correct?
A. Yes, sir. I believe it is, yes.
MR. CIRESI: Your Honor, we'd offer Exhibit 12979.
MR. WEBER: No objection, Your Honor.

THE COURT: Court will receive 12979.
BY MR. CIRESI:
Q. Now this shows the volume impact of Camel YAS growth; correct?
A. Yes.
Q. Okay. Now YAS --
This is in '89 now. They're using YAS to mean 18 to 24. At least that's what is said here; is that correct?
A. Yes, it's young adult smokers 18 to 24.
Q. All right. So there's an 18-year-old who just started smoking; right?
A. I'm sorry, is that -- you're asking me --
Q. Yes.
A. Some of them, perhaps. Some of them, no.
Q. Okay. So some of them just started smoking, some of them didn't start smoking at this point; correct?
A. Can you ask that question again?
Q. Well I'll just give you your answer. "Some of them, perhaps. Some of them no."
A. Yes.
Q. Isn't that what you said?
A. Some of them may have started before 18, some of them may have started after 18.

Q. All right.
A. I think that's the question you're asking.
Q. Now if you direct your attention to the first paragraph, "In 1988, Camel Ex. Regular" --
What does that refer to, sir?
A. That's -- that's talking about --
What that means is Camel filtered products. When you say "Camel Ex. Regular," it means the total Camel brand minus the Camel product that doesn't have the filter on it.
Q. The old-type Camel.
A. The short Camels we call them.
Q. Okay. So Camel Filters posted a 2.2 point national gain in usual brand share among males 18 to 24; right?
A. Yes, that's what this says.
Q. And some of those were already smokers and some of them were just beginning to smoke, according to your testimony; correct?
A. Well I would imagine that's true.
Q. And that says that's the brand's target; is that

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right?
A. Eighteen to 24.
Q. And a gain of 1.4 points among total 18 to 24 YAS; correct?

A. Yes.
Q. "This was the largest 12-month YAS gain ever recorded on Tracker, for Camel or any other RJR brand;" correct?
A. That's what it says.
Q. What's Tracker, sir?
A. Tracker is a phone survey where you call up smokers and -- on a periodic base and ask -- basis and ask them what brands they smoke.
Q. And where do you get their names?
A. I'm not sure where they get the names. I mean at various places. Today, you know, various data banks that are built, you know, getting names through -- you know, if you do Camel cash, you have competitive smokers that sign up, and there's all sorts of places where there's data banks that are developed. I'm not totally articulate in the exact development of data -- data banks, but they're doing Tracker on smokers that are 18 and above.
Q. Let me see if I understand what you said. People can sign up in various stores for various things, and the information comes in to RJR, and you keep a database on these people.
A. We -- we --
Yes.

Q. Is that right?
A. Yeah.
Q. Okay. There could be 14-year-olds in there; can't there?
A. They're --
We're not doing tracking studies on people that are 14 years old.
Q. You say -- you say they're 18 to 24.
A. That's what we're doing tracking data on.
Q. You don't know whether they're 18 to 24; do you, sir?
A. I'm not sure how they cross check, but there aren't 14-year-olds in here that we know of -- that I know of. We aren't tracking 14-year-olds in our Tracker.
Q. You have no idea how old these people are; do you, sir?
A. I believe the people we are tracking are of 18 to 24. If somebody got in the Tracker study that's -- or survey that's lying, you know, I'm not sure the checks and balances on Tracker.
Q. If they want to get some coupons or paraphernalia that you're selling and somebody says you got to be 18, and I'm 15 or 16 or 17, but I like the image that you're selling because maybe it

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attracts younger people, I just put down 18; right?
A. No, you have to -- it's 21. We don't --
Redemption for merchandise, for example, through the Camel Cash catalog, you have to be 21.
Q. How do you know they're 21?
A. They have to sign that they're 21.
Q. Ah.
A. So -- so if somebody wants to lie, they could fill out the form. And then they can get the merchandise at home if they lied, and then they can explain it to their parents.
Q. They got to be 18. How do you know they're 18?
A. Pardon me? I -- I didn't hear your question.
Q. If they have to be 21, how do you know they're 18?
A. I don't -- I --
If they have to be 21, how do I know they're 18?
Q. Yes. You said here the Tracker system, and it says 18 to 24.
A. Yes, but this is --
Q. You just said they had to be 21.
A. No. You asked me about redeeming -- I thought you were asking me about, you know, sending in and getting redemptions out of the Camel Cash catalog through the mail, and you -- and I said when you seek

to redeem that merchandise, you have to fill out -- through the mail, you have to fill out a card that says you're 21.
Q. So you send something in the mail that says you're 21. Is that how you do it?
A. That's what is done today, yes.
Q. Okay. Where do they get the 18 on Tracker? That's what -- excuse me.
You said that's what's done today?
A. You will have -- you know, I'd be happy --
Q. Did you say that's what's done today?
A. What, on 21?
Q. Yes.
A. On Camel Cash, as far as I know, we've been at 21. I don't know if it's changed over time, but we are at 21 today.
Q. Okay. All you know is it's 21 today in 1998; correct?
A. Well, and it was in '97 and '96 and '95. As far as I know we go, you know, exactly --
Has it been 21 all along? It's my impression that it has been.
Q. You don't know that; do you?
A. I know it is today --
Q. That's all you know; isn't it, sir?

A. -- and I know it was last year. You're going back in time. I can find out for you if it changed.

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Q. As you sit here today, sir, you know it was -- it's 21 today and it was 21 last year; is that what you're saying?
A. Yes.
Q. All right. Now that's for coupons that come in and people voluntarily self-report that they're 21; correct?
A. For redeeming merchandise. Yes, if they --
Q. And if 14- or 15- or 16- or 17-year-olds are attracted by your ads, they self-report their age; don't they?
A. A 14-year-old could take one of those cards and lie, yes.
Q. Now in this document it says 18 to 24. How do they know they're 18 with all of the Tracker system that you have?
A. How does who know who's 18?
Q. RJR.
A. The Tracker?
Q. RJR. How do they know it?
A. I am not familiar how we verify people in Tracker. I would have to find that information out for you.

Q. Simply don't know; do you, sir?
A. No, I don't.
Q. Let's follow this a little more then. "Notably, the national gains were primarily due to YAS growth outside Camel's traditionally strong PMSA" --
Is that the Pacific Mountain States Area?
A. Yes, that's what that is referring to.
Q. -- "ending some years of YAS share erosion outside the Pacific/Mountain." Correct?
A. Yes.
Q. And we saw erosion in previous memos referring to people under the age of 18; didn't we?
Q. I believe so.
Q. "The timing of this turnaround appears closely related to key changes in Camel marketing." Correct?
A. Yes.
Q. And the number one key change is "National expansion of the 'Old Joe' imagery." Correct?
A. Yes.
Q. That's Joe Camel; isn't it, sir?
A. Yes.
Q. And two is "Return of YAS-oriented retail pack programs, which had been absent outside Camel's emphasis markets for at least a year." Do you see that?

A. Yes.
Q. And do you know what a retail pack program is?
A. Some type of retail, you know, at-retail promotion.
Q. You get more cigarettes for less money.
A. No. It could be buy two packs, get a lighter. It could be a number of things.

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Q. It could be buy more cigarettes for less money; correct?
A. Back in -- this is in '88. I'm just guessing as to what retail pack promotion they're referring to, but I would think back in '88 it was more likely -- well I don't know. I mean it was more likely to be some type of real -- real premium item to me than just a discounting thing. But I don't know what pack promotion they're referring to here.
Q. Now the next point made is, "These observations point to Camel's 1988 YAS gains as real YAS growth." Correct?
A. Yes. They're reporting that they had real growth in 18- to 24-year-old smokers.
Q. As self-reported; correct, sir?
A. As reported through Tracker, 18 to 24.
Q. As reported through Tracker as you testified to here today; correct?

A. Yes.
Q. Now what is being said here is that the Old Joe imagery or Joe Camel had a cause-and-effect relationship on however old these people were; correct?
A. It's saying that there was a cause-and-effect relation between the Joe Camel campaign and the share of market of 18- to 24-year-old smokers.
Q. Thank you.
Whatever age they were; correct, sir?
A. This is talking about 18- to 24-year-old smokers.
Q. I know what the number is. It's right up there on the board.
A. Right.
Q. And you've testified --
MR. WEBER: Object to -- let me object to the comments of counsel, Your Honor.
THE COURT: Sustained.
Q. Sir, is the number right up there, 18 to 24?
A. Change my glasses.
What are you pointing at?
Q. First paragraph, males 18 to 24. Is that what it says?
A. Yes.

Q. And we talked about that tracking system as to whether you know they're 18 or 24; didn't we?
A. You asked me --
Q. Didn't --
A. -- how do I know somebody lied about being 18, and I said I am not sure how we verify those people and I could find out for you and get back to you.
Q. Sir, did we talk about what you know about the 18- to 24-year-old? That's all I want to know.
A. Yes, we did.
Q. Thank you.
Can you go on to the next page.

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A. This 1151?
Q. Yes.
"Was 1988 sales/volume impact" -- excuse me, let me restate it. "What 1988 sales/volume impact could be expected from Camel's YAS gain? Was it seen in actual sales data?" Correct?
A. Yes, that's what it says.
Q. "In 1988," --
THE COURT: Excuse me, counsel. I think we'll have to take a break for a moment.
THE CLERK: Court stands in recess.
(Recess taken.)
THE CLERK: All rise. Court is again in

session.
(Jury enters the courtroom.)
THE CLERK: Please be seated.
THE COURT: Counsel.
MR. CIRESI: Thank you, Your Honor.
BY MR. CIRESI:
Q. We were on Exhibit 12979. Do you recall that?
A. Let me find it.
Q. Volume one.
A. Yes, I'm back to that exhibit.
Q. Now if we go on to the next page, you recall I was asking you a question regarding the title next to number two. Do you recall where we were?
A. Yes. "What 1988 sales/volume impact...."
Q. Now it's reported here, "In 1988, total YAS 18 to 24 were only 13 percent of smokers 18 plus. Also, they smoked an average of 25 cigarettes per day, which was 82 percent of the average 18 plus rate." Do you see that?
A. Yes.
Q. That means that as people get older, they smoke more; correct?
A. I don't know. I guess. I don't know. I guess that's what that says.
Q. And then it goes on to say, "If we ignore

under-age volume, it follows that YAS 18 to 24 account for 10.7 percent of industry volume." Correct?
A. Yes.
Q. And the under-age volume are those 67 or 68 percent of smokers who start before the age of 18; correct?
A. Could you repeat that, please?
Q. Yes. That under-age volume is that 67 to 68 percent of smokers who start before the age of 18; correct?
A. I don't know. I mean I don't know what -- I don't think I know what percent of people start --
I have to tell you I'm confused on this one. Perhaps I need to read this paragraph a little more to make sure I understand what we're dealing with here.

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Q. Well what do you think "under-age volume" means?
A. Relative to what? Under-age volume as a percent of what and relative to what?
Q. What is under-age?
A. Are you asking me what -- how many cigarettes are smoked by under-age in terms of actual volume?
Q. My last question was pretty simple, Mr. Schindler. I'll repeat it for you.

What is under-age?
A. What is under-age? It's less than 18.
Q. Thank you.
Now, if under-age is less than 18, what do you think "under-age volume" means? The volumes of cigarettes smoked by those under 18?
A. Right.
Q. Fair assumption?
A. Yeah.
Q. Okay. And 67 percent of the smokers, according to an RJR document, start before the age of 18; correct? Correct, sir?
A. Where is the document that says 67 percent?
Q. Do you remember the marketing research report by Ms. Burrows?
A. Well I remember the report. I'm just having trouble remembering the 67 percent.
Q. Can you go back to Exhibit 18 -- excuse me, 12579.
A. Yes.
Q. Would you go to Bates number 8526.
A. Yes.
Q. And you'll recall that the statement is there that "More than two-thirds of male smokers start by age 18." Correct?

A. Yes.
Q. And then there's a cumulative down below that, cumulative male smokers starting by -- by starting age. Do you see that?
A. Yes.
Q. And do you see the 68.7 before age 18?
A. Yes. Got you.
Q. Now can you go back to the exhibit we were on.
A. Yup.
Q. 12979.
A. Yes.
Q. This is talking about the effects of the Joe Camel ad campaign; correct?
A. Yes.
Q. It's also talking about the effect of the YAS-orientated retail pack programs; correct?
A. Yes.
Q. And when it refers to under-age volume, you would assume, would you not, sir, that the Joe Camel campaign and the retail pack program had the same effect on those under-age smokers as it did on the ones 18 to 24?

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A. I can't assume that. I don't know that there's data here on the impact of a retail promotion or an advertising campaign on under-age smokers. I don't

know that we've ever collected -- I -- I don't believe we've ever collected data like that, so I don't --

I have no way of knowing what impact a promotion in 1988 had on under-age smokers when the company didn't do that type of consumer research.

Q. Well --

A. How would I know that?

Q. Well let me see if I can help you. Let's start at age 18. We know what impact it had on 18. You already testified to that; correct?

A. Yes.

Q. Okay. Let's go down one day from 18, 17 years old 364 days. Smoker. Same effect?

A. Mr. Ciresi, to the very best of my knowledge, we do not do research on people who are under-age and their response to advertising, to packaging, to product, to promotions, and so I have no data, no idea what impact a specific promotion at a point in time would have on somebody under the age of 18.

Q. So that you know what impact it had on somebody 18 years old, but you don't know what impact it had on somebody 17 years 364 days; correct?

A. My -- my understanding of this data is it's a cumulative of 18 to 24.

Q. But you don't --

A. I don't know how many 18-year-olds are in this data, I don't know what percent of 24-year-olds or 21-year-olds. I have no way of knowing. No mechanism to know the impact of the promotional execution on people under the age of 18.

Q. And sir, you've already testified you don't even know if they're all 18-year-olds, so this data could be reflecting 14-, 15-, 16-, 17-year-olds.

A. Which --

Q. 12-year-olds, couldn't it?

A. Which? Are you talking about Tracker data?

Q. Yes.

MR. WEBER: Objection, Your Honor, it's a mischaracterization of the testimony.

A. You're talking about Tracker data?

Q. Yes.

MR. WEBER: Mr. Schindler -- I'm sorry, Mr. Schindler.

THE COURT: Well I don't mean to interrupt, but I do have a role here.

(Laughter.)

THE WITNESS: Sorry, judge.

THE COURT: Okay.

THE WITNESS: I'm new at this. I'm sorry.

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THE COURT: Okay. Let me explain the role.
(Laughter.)
THE WITNESS: I'm sorry, I --
THE COURT: When your counsel, especially, who is representing you, stands up and makes an objection, allow me the opportunity to rule on it.
THE WITNESS: Sorry.
THE COURT: Okay. Thank you. Go ahead.
MR. CIRESI: Thank you, Your Honor.
BY MR. CIRESI:
Q. You don't know whether the Tracker was tracking 12-, 13-, 14-, 15-, 16-, or 17-year-olds, do you, based on your own testimony?
A. Well, on the break I asked one of my people to call Doug Weber, who's in consumer research --
MR. CIRESI: Your Honor, I'm going to have to respectfully interrupt the witness because obviously something took place outside this courtroom where he was asked or advised to do something, and now he wants to give some hearsay.
THE WITNESS: I --
MR. CIRESI: And I object to that.
MR. WEBER: Your Honor, I object to that -- may I be heard? I'm sorry.
THE COURT: Are you making an objection?

MR. WEBER: I'd like to respond to what counsel just said, Your Honor.
THE COURT: Do you have a legal objection that you'd like to make, counsel?
MR. WEBER: Yes. I do object to the objection that was just made. I object to the implication that somebody told Mr. Schindler to do something. There were questions asked before about this data. Mr. Schindler decided to get the answer to it.
THE COURT: All right. The question was whether he made this statement before. The answer is not responsive.
Ask the question again so the witness understands the question, please.
BY MR. CIRESI:
Q. Did you make that statement before, sir?
A. Could you repeat the statement?
Q. Yes. You did not know how Tracker worked with regard to whether people were 12, 13, 15 or 24. Did you make the statement?
A. I don't recall saying 12. I said I didn't know how Tracker was verified.
Q. Thank you.
Now you did say that there was a

cause-and-effect relationship between the Joe Camel campaign and the share of the market of 18- to 24-year-olds; didn't you?

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A. Yes.
Q. And you simply don't know if that same cause and effect drifts on down to people under the age of 18; is that your testimony, Mr. Schindler?
A. Yes, because we never talked to smokers at this time under the age of 18, and today under the age of 21.
Q. Can you direct your attention now to -- when you start talk -- or strike that.
Today you don't talk to people under the age of 21?
A. Yes.
Q. When did you start that?
A. It was in '91 or '92.
Q. And did you stop the Joe Camel campaign in '91 or '92?
A. No.
Q. Did you stop the Joe Camel campaign in '92 or '93?
A. No.
Q. Did you stop it in '93 or '94?
A. No.

Q. Did you stop it in '94 or '95?
A. No.
Q. Did you stop it in '95 or '96?
A. We stopped it in ninety -- no, not '96, no.
Q. Did you stop it in '97?
A. Yes.
Q. When in '97?
A. In around July.
Q. Right around the time of the proposed settlement; correct?
A. It --
Yeah, it was in that same timeframe.
Q. And we saw documents here that your people at RJR knew that that Joe Camel figure would influence people under the age of 18; didn't we?
MR. WEBER: Objection, Your Honor, it's a misstatement of the record.
THE COURT: No, you may answer that.
A. We saw a document earlier where somebody had the point of view from focus groups that the French Camel execution might appeal younger than 18 to 24.
Q. And younger than 18 would be minors; correct, sir?
A. Pardon me?
Q. Under 18 would be minors; correct?

A. Of course.
Q. Can you direct your attention to Exhibit 13144.
A. Yes.
Q. It's a qualitative assessment of Camel advertising equity for R. J. Reynolds Tobacco Company, October 1991?
A. Yes, sir.
MR. CIRESI: Your Honor, we'd offer Trial

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Exhibit 13144.
MR. WEBER: No objection, Your Honor.
THE COURT: Court will receive 13144.
BY MR. CIRESI:
Q. Did you authorize this qualitative assessment?
A. Did I?
Q. Yes.
A. No. I was in charge of manufacturing at this time.
Q. Have you seen this before?
A. I'm not sure. I don't -- I'm not sure. I don't think so. I'm just not totally sure. I've seen a lot of documents. I just --
This one does not pop to mind. Perhaps I'll recognize it as we get into it.
Q. Why don't you take a look at the table of contents, see if that refreshes your recollection.

A. I just don't -- ah, I did --
I just don't remember this one.
Q. All right. Can you turn to the next page, "STUDY BACKGROUND AND PURPOSE."
A. Yes. I'm there.
Q. Now you would agree in 1991 that there was increased pressure on the tobacco companies with respect to marketing to youth; correct?
A. Sure.
Q. People were watching them more carefully; correct?
A. There's been a lot of pressure about youth and cigarettes, yes.
Q. Outside sources were watching more carefully.
A. Well, they're watching aggressively and intently.
Q. And do you know if at this time RJR was using the code name "young adult smokers" to mean people under age 18?
A. No, "young adult smokers" is not a code name for people under the age of 18.
Q. Sir, if -- if your answer is no, just say no.
A. The term --
The term "young adult smokers" as used in the organization -- I'm clarifying -- is not a code term

for people under the age of 18.
Q. So when you see it and it says 18 to 24, you think it means only 18 to 24; correct?
A. I know it means 18 to 24.
Q. Because that's what the document says; doesn't it?
A. That's the way we run the business.
Q. And other documents were 14 to 24; correct?
A. Back in 1975, as I recall, we were --
Q. Up into the '80s.
A. Oh, up to the '80s, there were documents on tracking studies referring to people -- folks that are 14 to 17.

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Q. Marketing programs going to the board of directors and to the president into the '80s; correct?
A. That's what we reviewed here earlier today.
Q. I'd like you to direct your attention in this document to page 5388. Now do you know if the qualitative assessments of the Camel -- Joe Camel campaign have pointed out to RJR that there's a cause-and-effect relationship between that campaign and people smoking Camels?
A. Yes.
Q. And it does show that; doesn't it?

A. Yes. I believe that the research and the marketplace performance say that there's a relationship between Camel brand's share of market and its advertising and marketing.
Q. Okay. And we look here at some of the comments that were made; correct, sir?
A. Yes.
Q. On this page we see, if we start down below, "Some -- in both Camel and Marlboro groups; in both female and male groups -- volunteered that the Camel advertising is 'probably' a factor contributing to their positive feelings for/personal comfort level with the Camel brand." Correct?
A. Yes, that's what it says.
Q. "This point seems particularly noteworthy, since consumers are generally reluctant to overtly admit to being influenced by advertising." Correct?
A. Yes, that's what it says.
Q. And there's an asterisk to that; isn't there?
A. Yes.
Q. And the asterisk down below states, "Generally speaking -- in a focused group environment -- whether for cigarettes or for other packaged goods -- consumers are inclined either to be critical of advertising and/or to deny that it plays any role in

their choice of products." Correct?
A. Yes, that's what it says.
Q. And that's why experts in focus groups ask certain types of questions in order to draw a conclusion whether or not there's a cause-and-effect relationship to advertising; correct?
A. Folks that run focus groups are trained in the discipline of getting 10 people around a table and asking them questions in an area that's, if you will, subjective, to try and elicit opinions. People sit behind one-way glass and view the focus group, and then they discuss those people's reactions to the advertising or packaging, whatever it is.
Q. You've attended some of them; haven't you, sir?
A. I've been at a few of them, yes.
Q. Young people were there; weren't they?
A. I've never seen a focus group with anybody younger than 21.

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Q. Did you take their IDs?
A. Me personally?
Q. Yes.
A. No. But I believe the people that controlled the focus group did.
Q. Well in 1991, you're there talking about what they thought were 18-year-olds; correct?

A. What -- what they thought were 18-year-olds.
Q. Yes. This one was 18 to 24; correct?
A. I assume it was. I know in the '91, '92 period there was a change where we stopped talking to 18-, 19- and 20-year-olds and went to 21-year-olds, so if this was before that change, I -- I'll have to assume there would have been some 18- to 19- to 20-year-olds in this focus group. But I don't know that for sure because I wasn't at them.
Q. Now if we go on to the next page, we see what some of these comments were of these people; correct?
A. You mean page 10?
Q. Yes.
A. Yes.
Q. "The Camel dude and the advertising. Real smooth -- a smooth character. It has to do with the cigarette itself and who smokes Camel. I like that Camel. Has cool advertising. I can relate to it. I think I'd feel dumb smoking a brand like Benson & Hedges -- their ads are totally stupid." That was one comment; correct?
A. Yup. Sure was.
Q. Another comment, "Everyone always starts talking about that Joe Cool guy -- the phallic Camel. It's really kind of funny. The billboards are so bright

and all -- and he's so totally laid back -- I think subconsciously it has some influence on why I smoke Camel. I started 'cause of my boyfriend -- he smokes Camel."
That's peer pressure; correct?
A. That's boyfriend pressure.
Q. Boyfriend pressure.
A. It's even bigger than peer pressure.
Q. Okay. "It's a good brand of cigarettes, and it has the best cigarette advertising going. I think it's a cool brand to smoke if you're like me -- somebody who enjoys a cigarette." Correct?
A. That's what it says.
Q. Another comment, "Sometimes I think I buy Camel instead of Marlboro because that Camel guy -- the big billboards -- is everywhere. Magazines, too. You can't miss them. I look forward to see new ones. I think they're appealing to our age. He's a partying dude -- cool, laid back -- the women are always swarming around him -- what guy wouldn't want to be like him? Since so many guys I know smoke Camel -- I gotta believe they like the advertising -- a lot. I do." Correct?

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A. Well that's what it says.
Q. Peer pressure there too; correct, sir?

A. He's talking about his buddies.
Q. Go on to the next page, please, page 11. Remember we were talking about the promotions at the beaches, giving away free things, et cetera?
A. Yes.
Q. Here's some more comments. "Free things with Camel -- T-shirts, hats, the six-pack holder -- really great. Camel always gives away fun gifts. The Camel lighter was the coolest. Can't think of any free gift from Camel I didn't -- I didn't think was good. They're always cool -- like Joe -- and they're never junk -- good quality stuff -- like the cigarettes." Correct?
A. That's what it says.
Q. "The free cigarettes -- buy three, get two free -- is Camel's way of thanking people for choosing that brand." Correct?
A. Yes.
Q. "People are willing to pay full price and not go for the cheap-o brand -- like Bucks -- then they should be rewarded. I think giving away free cigarettes is sort of classy. Of course, the freebies -- the lighters and T-shirts -- they're top quality, and they're a lot of fun -- like the ads." Correct?

A. Yes.
Q. "I collect a lot of these things -- not just Camel gifts -- and I can tell you Camel is always top quality -- never junky like some other companies' gifts. Even though I'm a Marlboro smoker mainly -- Marlboro doesn't always -- doesn't always give away quality things. Camel always holds to a quality, high class standard with their freebies." Correct?
A. Yes, that's what it says.
Q. And these types of reports go to management; don't they, sir?
A. Yes. I'm not sure where this one went, but --
Q. You've read reports like this; correct?
A. Yes. Over time, yes.
Q. Can you turn to page 23. There's some more comments. "Some of the ads look like Joe's rich and everything, but some don't. Some look like what I do -- play pool. Hang out with buddies, playing music. Joe likes both. If you let your imagination go -- who knows? Maybe we can be driving around in hot cars, going to Caribbean islands, too. If Joe's a regular guy who made it, it's possible any of us regular guys can make it, too." Another comment you got; correct?

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A. Yes.
Q. "If I only saw the Camel in a white dinner jacket, I could never get into what he's about."
I guess older people get into white dinner jackets; is that right, sir?
A. I guess some do.
Q. "It's all the different things he does that makes me able to relate. He's not always looking so fancy when he's playing pool and where he's hanging out lookin' like a loner -- he looks like the guys I hang out with. We wear work shorts -- shirts, baseball hats, leather jackets. Cool that he does things rich people do, too, but you can tell he probably was once kinda hard up, too. Good for him that he's making up for it now. That's somethin' I hope to do, too." Is that right?
A. Yes, that's what it says.
Q. Sounds like young people; doesn't it, sir?
A. I don't know how old these people were. I am sure they weren't under 18. And this person here, this random comment from a focus group, could have been 25 for all you or I know. He could have been 29, could have been 18, could have been 19, could have been 20. I have no idea how old that person is.
Q. Can you answer my question? Sounds like young

people; doesn't it?
A. It sounds like 18- to 24-year-olds to me.
Q. "Showing the Camel in all different scenes helps people think about Camel cigarettes as a brand that goes with all lifestyles. The big difference from ad to ad shows how Camel and Joe Cool can fit in everywhere. He looks real natural -- real comfortable -- smoking his Camels no matter where he is or who he's with or how he's dressed." Is that right?
A. Yes.
MR. WEBER: Objection, Your Honor, I'd like at this point just to say if we're just going to read through focus group comments, I'd object to it as cumulative. The document is in evidence.
THE COURT: No, you may ask him.
Q. Go down, then, page 24, sir. "It's neat that Joe's not a real person." Or wait a minute, let me start above that.
"The 'non-people'/'character nature' of Joe Camel seems key to why consumers willingly admit his relevance and/or their envy of his lifestyle and/or that he represents a role model, et cetera.
"It's neat that Joe's not a real person. It really gets you into using your imagination. Maybe

if he was a guy like the Marlboro Man -- it'd be less fun, less exciting. 'cause he's sort of up real -- it's not hard to believe it all.
"I don't like cigarette ads with real people.

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They look so fake -- trying to act real happy and excited and all. Joe's so cool 'cause he's real wierd-looking, but he does so many neat things. I didn't like any other Camel advertising at all. The blond guy in the safari clothes was a total dork -- trying to be a macho guy but looking so wimpy -- so fake. Joe's so totally something else that I just like him. It sounds wierd, but even though he's not real -- he's a good role model." Is that right?
A. Is that right?
Q. Yeah.
A. That's what that says.
Q. And that's the type of information you got from your focus groups, sir?
A. Well yes. This is a summary of focus group comments.
Q. And does that sound like young people?
A. It sounds -- sounds like, I'm assuming, at least 18- to 24-year-olds in the focus group, if not older, we're talking about.

Q. And what you try to do with the cigarettes is you try to addict people once they start; don't you?
A. Pardon me? Try to addict people?
Q. Yes.
A. No.
Q. You don't.
A. No.
Q. You try to get them to start smoking and then hope they get addicted over time; don't you?
A. No.
Q. Can you direct your attention to Exhibit 12408, 12408.
A. Yes. I'm there.
Q. It's an RJR confidential memo; correct?
A. Yes.
Q. "RESEARCH PLANNING ON THE NATURE OF THE TOBACCO BUSINESS AND THE CRUCIAL ROLE OF NICOTINE THEREIN." Correct?
A. Yes.
Q. This is an RJR confidential document; correct, sir?
A. That's what's stamped on the front of it, yes.
Q. Have you seen it before?
A. Is this Claude Teague?
Q. Yes.

A. Yes.
Q. When did you first see it?
A. I -- I think about a year or year and a half ago. Year and three months ago.
Q. And Mr. Teague was head of research and development at RJR?
A. No, he wasn't.
Q. What was his title, sir?
A. Well this was in -- is this in -- when --

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Do you remember when this was?
Q. April 14th, 1972. Last page.
A. '72. He was a manager, I believe, in R&D at that point. His last title in the company before he retired, somewhere in the '80s, was director in R&D over planning and budgets and administration.
Q. Let's take a look at what Dr. Teague said back in 1972. Go to the first page of the text, please.
A. Yes.
Q. "In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry." Correct?
A. That's what it says.
Q. Did RJR ever say that in 1972?
A. No. Claude Teague's saying this.

Q. Sir, did RJR ever say that in 1972? "Yes" or "no."
A. No.
Q. Did RJR ever say that in the '80s?
A. Of course not.
Q. Did RJR ever say that in the '90s?
A. No.
Q. Except the last part of January, Mr. Goldstone said that smoking was addictive; didn't he?
MR. WEBER: Objection, that's a misstatement and it's also a mischaracterization of testimony, Your Honor.
A. I don't believe --
THE COURT: Well you can answer it if you know.
A. I don't believe that's what he said.
Q. Did you watch him on the congressional hearings?
A. Yes.
Q. Did he testify whether it was addictive or not?
A. Well what he said --
It depends what you mean by "addictive." I recall what Steve said was that if you define, you know, smoking as a habit, that some people -- difficult to give up or something like that, that it -- that it would meet that definition

of addiction. I believe that's what he said, or something like that. If you have the testimony, it would be helpful to repeat it.
Q. So you don't recall exactly what he said. A fair statement?
A. No, not in absolute detail, no.
Q. Dr. Teague said, "Tobacco products, uniquely, contain and deliver nicotine, a potent drug with a variety of physiological effects." Correct?
A. That's what this says.
Q. And he goes on to state that "Nicotine is known to be a habit-forming alkaloid, hence the confirmed user of tobacco products is primarily seeking a physiological 'satisfaction' derived from nicotine --

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and perhaps other active components -- compounds. His choice of product and pattern of usage are primarily determined by his individual nicotine dosage requirements and secondarily by a variety of other considerations." Correct?
A. That's what --
MR. WEBER: Objection, Your Honor. Objection, Your Honor. I think we're in a posture now where this document for the third time is being read by counsel. I'd object to it as cumulative unless he has specific questions for this witness.

THE COURT: I don't think this witness has had an opportunity to address the document, to my knowledge.
MR. CIRESI: We haven't used this document with this witness.
THE COURT: All right. Go ahead.
MR. CIRESI: I would point out for the record that this witness was designated as the individual who would be produced by RJR on behalf of the company in this trial.
MR. WEBER: I object to that, Your Honor. This is the witness they requested to bring in.
THE COURT: Do you have a question?
MR. CIRESI: I will go on to the next question.
THE COURT: Let's move on.
BY MR. CIRESI:
Q. Sir, do you know who this document went to within RJR?
A. I have no idea if it went to anybody.
Q. Just written and it went to no one; is that right?
A. It's possible. People do thought pieces for themselves. This is something that Claude Teague wrote. It doesn't have a distribution on it.

I don't know who it went to, if it went to anybody. I think there's some pretty personal points of view about the cigarette business that obviously don't reflect my position or the company's position that frankly, I think, are pretty bizarre.
Q. Well we'll see about that as we go through the documents, sir.
MR. WEBER: Object to counsel's commentary, Your Honor.
THE COURT: Yes. Ask a question, counsel.
Q. Have you looked at all the documents that were designated for you, sir?
A. I've looked at a bunch of them. I -- probably most of them. Whether or not I've seen all of them, I think I'm doing pretty good up to now.
Q. Let's take a look at what else it says. "Thus a tobacco product is, in essence, a vehicle for delivery of nicotine, designed to deliver the nicotine in a generally acceptable and attractive

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form. Our Industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine, and our Company's position in our industry is determined by our ability to produce dosage forms of nicotine which have more overall value, tangible or intangible, to the consumer than those of our

competitors." Do you see that?
A. Yes.
Q. Do you agree with that statement?
A. I think it is one of the most absurd descriptions of our business that I have ever seen and is totally devoid of this company and its policy and the way it operates its business.
Q. Okay.
A. With all due respect to Dr. Teague.
Q. So I take it, then, you don't agree with Dr. Teague; is that a fair statement?
A. That's a fair statement.
Q. Let's go on, then, to the bottom, starting in the last line. "To this date we need to develop" --
"To do this we need to develop new data on such things as the physiological effects of nicotine, the rate of absorption and elimination of nicotine delivered in different doses at different frequencies and by different routes...." Do you agree with that?
A. Of course not.
Q. Okay. Further on in that photograph, "However, if we knew more about nicotine absorption, action, elimination, enhancement and the like, it should, in theory, be possible to more precisely specify, and deliver, the optimum amounts of nicotine activity in

sophisticated products which would be more satisfying and desirable to the user." Do you see that?
A. Yes.
Q. Do you agree with that statement?
A. No.
Q. Okay. And do you know if RJR ever looked at dosage levels of nicotine?
A. Dosage levels?
Q. Yes.
A. I don't recall ever hearing of anybody looking at dosage levels of nicotine.
Q. Do you know if they looked at threshold levels of nicotine?
A. I'm not sure what you mean by "threshold."
Q. You've never seen such documents; is that correct?
A. Well I'm not sure what you mean by "threshold." I'm just asking you what -- what do you mean by "threshold?"
Q. A level below which it will not have its addictive characteristics.
A. I've never seen anything related to below a certain level the product's not addictive or something like that. I've never seen anything like

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that.

Q. All right. Next it's stated here, "Before proceeding too far in the direction of design of dosage forms for nicotine, it may be well to consider another aspect of" --
A. Mr. Ciresi, what page are you on now?
Q. Page four.
A. Okay. I'm mixed up here.
Okay. Let's go. I got you.
Q. Are you with me?
A. Yup.
Q. All right. "Below -- Before proceeding too far in the direction of design of dosage forms for nicotine, it may be well to consider another aspect of our business; that is, the factors which induce a pre-smoker or non-smoker to become a habituated smoker." Do you agree with that statement?
A. No, I don't agree with that. I think it's ridiculous.
Q. "Paradoxically, the things which keep a confirmed smoker habituated and 'satisfied', i.e., nicotine and secondary physical and manipulative gratifications, are unknown and/or largely unexplained to the non-smoker." Do you agree with that?
A. I don't agree with that. I don't know what he's

talking about.
Q. All right. The next statement he makes. "He does not start smoking to obtain undefined physiological gratifications or reliefs, and certainly he does not start to smoke to satisfy a non-existent craving for nicotine." Do you agree with that?
A. I don't agree with anything in here that I've seen so far. This sounds like an opinion piece by Dr. Teague. I think it's some really odd stuff, quite frankly. I don't agree with it.
Q. Next statement, "Rather, he appears to start" -- and this is a non-smoker now. "Rather, he appears to start to smoke for purely psycological reasons -- to emulate a valued image, to conform, to experiment, to defy, to be daring, or to have something to do with his hands, and the like." Do you agree with that?
A. No, I don't agree with that. I've never seen any research on --
We've never done any research with people about non-smokers and why they smoke and --
And Dr. Teague isn't talking about research here. He's just firing off a bunch of opinions, it sounds to me.

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Q. So you don't think young people start to smoke to emulate a valued image, to conform, to experiment, to defy, and to have something to do with their hands and the like; is that right?
A. I think young people smoke because of peer pressure, because of environmental factors in their home, their parents smoke, their brothers smoke, in -- in that -- in close proximity to their social life, somewhere in there is when and how they start smoking.
Q. Do they start to smoke to emulate a valued image, to conform, to experiment, to defy, to be daring?
A. I have no idea.
Q. No idea at all, sir.
A. No. Never done research with 14- to 17-year-olds.
Q. Can you go on to page six.
A. Yes, I'm there.
Q. "If, as proposed above" --
A. Oh wait. Okay, got you.
Q. About --
A. I'm with you.
Q. -- five lines down.
A. I'm with you.

Q. Okay. "If, as proposed above, nicotine is the sine qua non of smoking" --
Do you know what the "sine qua non" is?
A. I guess it means the reason people smoke or the primary reason.
Q. The reason to be?
A. Yeah.
Q. "If, as proposed above, nicotine is the sine qua non of smoking, and if we meekly accept the allegations of our critics and move toward reduction or elimination of nicotine from our products, then we shall eventually liquidate our business." Do you see that?
A. Yes, I do.
Q. Did RJR ever sell a denicotinized cigarette?
A. No, we haven't.
Q. Do you know if Philip Morris did?
A. They test marketed a product called Next.
Q. Next. What happened to it?
A. It didn't work out. It didn't sell.
Q. Sold at first; didn't it?
A. What do you mean it sold at first?
Q. When they first put it on the market, it sold.
A. I'm really not familiar with the level of trial they had by consumers and repeats and --

I really don't know anything about their internal market-research data on how that performed in test market.
Q. If you removed the nicotine from RJR's cigarettes, do you think you'd sell them?

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A. I don't know. I mean nicotine certainly plays a part in -- in the smoking process. I've never tried to sell a cigarette without nicotine.
Q. Just no idea; correct, sir?
A. Well Next didn't work. I don't know why it didn't work. I've never tested a product without nicotine.
Q. So you just don't have any idea; correct?
A. I don't have any first-hand knowledge of what happens if you market a product without nicotine. I know what happened to Next in the test market, and if that were repeated throughout our business, then you'd say people wouldn't smoke cigarettes.
Q. You'd have to liquidate the business; correct?
A. I think it would self-liquidate if people didn't buy the product.
Q. Can you direct your attention to Exhibit 13155, the last exhibit in that volume, sir.
A. Yes.
Q. It's another RJR secret document, number 15;

correct?
A. Yes, it is.
Q. Just like the last one that had secret on it; correct?
A. Yes, it has secret on it.
Q. And when they're secret, they have limited distribution; don't they?
A. I think that's why they put secret on it.
Q. Now you reviewed this document before?
A. Let me -- let me see what it is.
Q. Why don't you go to the table of contents.
A. I think I have. I think --
Yeah, I remember seeing documents about pH, and so I -- I -- I think I've seen this one.
Q. Okay. Can you direct your attention to the first page.
A. Yes.
Q. Now first of all there's some introduction and some objectives here; correct?
A. Yes, there are.
Q. And do you recall this document was around 1973, sir?
A. Yes.
Q. And you recall that the memo regarding the marketing of -- the test marketing of cigarettes and

changing pH with regard to the presentation to the board was in September of 1974?
A. Yes. We're back to that board presentation --
Q. Yes.
A. -- we started with this morning?
Q. Yes.
A. I remember.
Q. And that the pH was going to be increased in cigarettes; correct?
A. And --

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Q. And they had already --
A. Yeah.
Q. -- been test marketed?
A. You know, I seem to remember that from this morning, those documents.
Q. Now do you know if in the 1970s, RJR was concerned about Marlboro overtaking it in the marketplace?
A. Sure.
Q. And an investigation was made into that?
A. Well, everybody had opinions on why Marlboro was --
Q. That's not what I asked you.
A. Investigation?
Q. Yes.

A. Everybody was investigating, marketing people, salespeople, everybody, R&D people. Was it the advertising -- is it the product? What's going on here? Why is the brand growing?
Q. And your research and development department investigated it?
A. I would assume so. I mean based --
Yes, I would assume so.
Q. And reported to management on it; correct?
A. I guess.
Q. And management directed that action be taken; correct?
A. I --
You got to tell me that you're talking about in terms of action directed to do what. I'm not sure I'm following this at this point.
Q. Your cigarettes were ammoniated, which changed the pH factor; weren't they?
A. When? Are you talking about in --
Q. 1975, sir.
A. I remember from documents in my deposition that Mr. O'Fallon, who works for you, took, there were documents about pH and ammonia and theories, as I recall. And I'm not sure if this is the memo or not, or the document. There was a theory that Marlboro's

share of market was growing because Marlboro put ammonia in the tobacco which raised the pH which raised the free nicotine, as I recall it from O'Fallon and some of the documents there.
Q. That's not what I asked you.
A. Well --
Q. Your cigarettes were ammoniated in 1975 and later; correct?
A. There were some brands styles, I imagine. Today we have 20 percent of our cigarettes, one out of five, that have ammoniated G7.
Q. Sir -- yeah. That's a different type of leaf.
In 1975 your brands were ammoniated. "Yes" or "no" or you don't know.
A. Not all the brands. I --

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Q. Do you know how many were?
A. I absolutely do not know. I know today.
Q. Can you direct your attention --
MR. CIRESI: Your Honor, I'm going to move to strike the last response. Discovery was not permitted post-1994.
MR. WEBER: Object to that.
THE COURT: That last response will be stricken.
MR. WEBER: I would, just for the record,

Your Honor, like to object to the "not permitted." That was by agreement of counsel and worked out.
THE COURT: That was not permitted by the court after agreement of counsel. It's a fair statement, counsel.
BY MR. CIRESI:
Q. Can you direct your attention, sir, to page 4124 of this exhibit.
A. Yes.
Q. Introduction and historical data. Do you see it?
A. Yes.
Q. And in the beginning, Dr. Teague points out that "This year the continuing, vigorous sales growth of various competitive cigarette brands...prompted an extensive study of the physical and chemical properties of those brands compared with our brands;" correct?
A. Yes.
Q. Pardon me?
A. Yes.
Q. And in the next section he puts down the historical data, trends and brand comparisons; correct?
A. Yes.

Q. And he deals with the smoke pH; correct?
A. Yes.
Q. And he shows that RJR's data showed that smoke --
A. Where -- where are you?
Q. Last paragraph. "Our data show that smoke from our brands, and all other significant competitive brands, in recent years has consistently and significantly lower in pH than smoke from Marlboro and to a lesser degree Kool." Correct?
A. Yes, that's what it says.
Q. And he goes on to state that "All evidence indicates that the relatively high smoke pH, paren, high alkalinity, close paren, shown by Marlboro (and other Philip Morris brands) and Kool is deliberate and controlled." Correct?
A. That's his opinion.
Q. And he states, "This has raised questions as to: (1) the effect of higher smoke pH on nicotine impact and smoke quality, hence market performance...;"

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correct?
A. That's his opinion. That's stated there.
Q. -- "and (2) how the higher smoke pH might be accomplished;" correct?
A. Yes, that's what he's saying.

Q. And attached to this document are marketing studies showing correlation of pH and share of market performance; correct?
A. I'm not sure of that.
Q. Well if you page through to the end, you'll find an August 10th letter, Bates number 4141 -- they may not be in order there because we had to piece the document together, sir.
A. Okay, 4141, yes.
Q. August 10th, 1973? Jerry Moore; correct?
A. Yes.
Q. Marketing research department?
A. Yes.
Q. To Mr. Blevins; correct?
A. Yes.
Q. And this was a correlation of pH and share of market performance; correct?
A. Yes.
Q. And if you go to the next page, you'll see a July 3rd, 1973 correlation of smoke balance factors with share of market trends.
A. Yes.
Q. Correct?
A. That's what it says.
Q. And Mr. Moore was in the marketing department.

A. He was marketing research -- a quantitative analyst, operations research analyst.
Q. And Mr. Blevins was in the marketing department; correct?
A. Marketing research.
Q. And Dr. Teague was in the research department; correct?
A. Yes. He was in research and development.
Q. Can you go back, now, to the body of the document where we were. We were on "HISTORICAL DATA, TRENDS AND BRAND COMPARISONS," and please go to the next page, "SMOKE pH AND 'FREE' NICOTINE."
A. Yes.
Q. First paragraph, Dr. Teague says, "In essence, a cigarette system -- a cigarette is a system for delivery of nicotine to the smoker in attractive, useful form." Correct?
A. Yes. That's what it says.
Q. And the FDA has found the cigarette to be a drug-delivery device; hasn't it?
A. That's their judgment.
Q. Yes.
A. Yes.
Q. They agree with Dr. Teague; correct?
A. I suppose you could look at it that way.

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Q. "As the smoke pH increases above 6.0, an increasing proportion of the total smoke nicotine occurs in 'free' form, which is volatile, rapidly absorbed by the smoker, and believed to be instantly perceived as nicotine 'kick.'" Do you see that?
A. Yes.
Q. And if you go down to Roman Numeral IV.
A. I'm there.
Q. "SMOKE pH AND OTHER SMOKE QUALITIES.
"In addition to enhancing nicotine 'kick,' increasing the pH, paren, increasing alkalinity, of smoke above 6.0 causes other changes, particularly when the increase in smoke pH is achieved by adding ammonia to the blend." Do you see that?
A. Yes.
Q. "As smoke pH increases, in general stemmy taste, mouth irritation, flue-cured flavor and Turkish flavor are diminished, and burley flavor and character are enhanced." Do you see that?
A. Yeah. Talking about a taste change there.
Q. And can you go on to the next page, VI, Roman numeral VI, "PRESENT RJR BRAND ACTIVITY."
A. Yes.
Q. "If our data, correlations and conclusions are valid, then what has emerged is a rather new type of

cigarette, represented by Marlboro and Kool, with high nicotine 'kick,' burley flavor, mildness to the mouth, increased sensation to the throat, all largely the result of higher smoke pH." Do you see that?
A. Yeah. I also see the sentence starts with "If our data, correlations and conclusions," so pretty speculative sentence to me.
Q. Okay. Well let's go on. We're going to track through and see how speculative it is.
A. Good.
MR. WEBER: I object to counsel's commentary again, Your Honor.
MR. CIRESI: His response was non-responsive. Move to strike.
THE COURT: Sustained. I'm sustaining defense counsel's objection to your commentary, counsel.
MR. CIRESI: Okay. I would move to strike the latter part of his answer as being non-responsive.
THE COURT: It is non-responsive. That will be stricken.
BY MR. CIRESI:
Q. Sir, Roman numeral VII, "RESEARCH ACTIVITIES, CURRENT AND PLANNED." Do you see that?

A. Yes, I do.

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Q. "As its part in this collaborative effort...," do you see that?
A. Yes, I do.
Q. And a "collaborative effort" means that research was working with other departments of the company; correct?
A. Yes.
Q. And it says, "Research has: collected, correlated, interpreted and described to Management data on smoke pH of various brands." Correct?
A. Yes. That's what it says.
Q. And it has "developed and put into routine use improved methods for measurement of smoke pH." Correct?
A. That's what it says.
Q. And down below in the next paragraph, starting with the word "Methods," it states as follows: "Methods which may be used to increase smoke pH and/or nicotine 'kick' include: increasing the amount of (strong) burley in the blend, (2) reduction of casing sugar on the burley and/or blend," and "(3) use of alkaline additives, usually ammonia compounds, to the blend." Correct?
A. Yes, that's what it says.

Q. And then it cites three other ways to increase smoke pH and/or nicotine kick; correct?
A. Yes, it does.
Q. And it says, "Methods one to three, in combination, represent the Philip Morris approach, and are under active investigation," at that time; correct?
A. That's what it says.
Q. Now can you direct your attention to Exhibit 12800.
A. Yes, I'm there.
Q. And this is a document from Mr. Bernasek and Mr. Nystrom?
A. Yes.
Q. To Mr. DiMarco; correct?
A. Dr. DiMarco.
Q. And who is Dr. DiMarco?
A. He was the senior VP of research and development.
Q. Senior VP, research and development.
And Mr. Bernasek, do you know who he was?
A. No, I don't.
Q. Do you know who Mr. Nystrom was?
A. No, I don't.
Q. And in here it states, "Attached are position

papers describing our rationale for using the following additives in RJR tobacco flavor formulations;" correct?
A. Yes, that's what that says.
Q. And sir, if you go over to the page which bears the Bates number 8509, last four numbers, --

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A. Got it.
Q. -- and it talks about ammoniation of reconstituted tobacco; correct?
A. Yes, it does.
Q. And it says, "Studies on the ammoniation of reconstituted tobacco were started in 1973 as a result of R&D studies carried out during the fifties and early '70s. During the 1950s, Dr. C. E. Teague investigated the ammoniation of tobacco and tobacco stems and reported dramatic improvements in the smoking qualities of ammoniated tobacco stems. Smoke harshness and irritation were reduced and taste properties were improved." Correct?
A. Yeah.
Q. That reflects that back as early as the fifties, RJR was investigating ammoniation; correct?
A. Yeah. This says that they investigated and found taste improvements.
Q. And in the next paragraph, "In the early '70s, a

major R&D program was initiated to investigate the physical chemistry of tobacco and tobacco smoke in an attempt to gain a better understanding of the factors affecting smoke harshness, irritation and strength." Correct?
A. Yes.
Q. And it said, "These studies led to the following observations and conclusions." Do you see that?
A. Yes, I do.
Q. And number one was, "The pH of cigarette smoke is important to smoke quality and can be used as a measure of the physiological strength of smoke." Do you see that?
A. Yes.
Q. And "physiological" refers to the changing of the body functions; doesn't it, sir?
A. Changing or impact on. Physiological, I think, would refer to taste to me, or whatever.
Q. And nicotine is an alkaloid; isn't it?
A. Yes.
Q. And it affects the bodily functions; doesn't it?
A. It has an effect on, you know, bodily functions.
Q. It affects the neurotransmitters in the brain; doesn't it?
A. My understanding is to some degree. You're

getting a little beyond my level of expertise, Mr. Ciresi.
Q. And what was reported here to Dr. DiMarco, head of research and development, was that the pH of cigarette smoke was important with regard to the measure of the physiological strength of smoke; correct?
A. Well he says --
MR. WEBER: Object -- let me object, Your Honor. That misstates that paragraph.
A. This --

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THE COURT: I don't -- I think that's a fair statement of item number one.
Q. Can you go on, then, sir, to the next page.
A. Yes.
Q. It says, halfway down under number seven -- do you see that?
A. "Studies of the effect of ammonia...?"
Q. No. "Based on the above observations...." After number seven. Do you see the paragraph?
A. Oh, yes.
Q. "Based on the above -- above observations, it was decided to investigate the use of ammoniated reconstituted tobacco (G7A) as a means of increasing the smoke pH of RJR's cigarette products." Correct?

A. Yes. That's what it says.
Q. And do you see the last sentence of that, "Since the -- Since the introduction of Camel Filter in 1975, G7A has been tested and/or introduced in nineteen additional brands." Do you see that?
A. Yes.
Q. And in 1974 we saw that they were test marketing the Camel with regard to changing the ammonia pH; didn't we?
Q. They were test marketing it, yes, a new blend for Camel.
Q. Yes. And changing the pH reported to the board of directors of RJR Industries at that time; correct?
A. Yes.
Q. And this document shows that it was introduced in the Camel Filter in '75; correct, sir?
A. That's what this says.
Q. And can you direct your attention to Exhibit 13165.
A. Is that in a different book?
Q. It will go on to the next book.
A. Yes.
Yes.
Q. This is a document titled "REST PROGRAM REVIEW." Do you know what that is?

A. The REST program?
Q. Yes.
A. I have some knowledge of what it was, yes.
Q. Re-Establish Soluble Tobacco?
A. Yes. I believe that's what it stood for, yeah.
Q. May 3rd, 1991; correct?
A. Yes, uh-huh.
Q. And can you turn your attention, please, to page`9576 of that document.
A. Yes.
Q. Do you know who Mr. Haberkern is?
A. Yes, that's Dick Haberkern. He was a process engineer that worked in the process engineering group in R&D.
Q. Still with the company?
A. No. He retired about a year ago.

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Q. Okay. And there's a mission statement here; correct?
A. Yes, there is.
Q. "Develop chemically modified tobaccos using REST Processing as a basis; support evaluation of the resultant materials in product tests; and develop practical process operations to achieve the desired modifications at the appropriate scale." Correct, sir?

A. Yes, that's what it says.
Q. And down in number seven under the operating environment, do you see where it's reported, "R&D has achieved on a development scale a practical process for selectively adjusting the nicotine content in a tobacco extract and, therefore, in the tobacco blend after REST processing?"
A. Yeah, that's what it says. It says to me they've got some kind of bench model somewhere.
Q. And can you go to Exhibit 9 -- or I'm sorry, page 9584, same exhibit, last four Bates numbers.
A. Yes.
Q. And this is called a "Controlled Nicotine Process," and there's a "Goal" and a "Basis;" correct?
A. Yes.
Q. And the goal was "To develop a viable process for the initial" -- or "for the total control of nicotine in product, in conjunction with the REST process without affecting smoking performance other than attributes connected to nicotine. Basic development and process specifications are to be completed by the end of 1991." Correct?
A. Yes, that's what that says.
Q. And then it states the basis for that; doesn't it, sir?

A. Yup.
Q. The basis says, "We" --
And that means RJR; correct?
A. Whoever wrote this was not speaking for RJR.
Q. Well, sir, it says "we;" doesn't it?
A. I'm part of the "we." I am the CEO. This is not speaking for me. I represent the company.
Q. I know what you want to say today. Ah, I --
MR. CIRESI: Strike the comment, Your Honor.
Q. The document says "we;" correct?
A. The person that wrote this document said "we."
Q. Okay. And did somebody write back to the person who wrote this document and said "we" are not RJR?
A. I found out about this document on a news show in Winston-Salem last Thursday. On Friday of last week I talked to my head of R&D about this document.
MR. CIRESI: Your Honor --
A. He started with a very basic question --
MR. CIRESI: Your Honor --

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THE COURT: Sir, please try and respond to the question.
Q. Did you see any document that wrote back to these people that said "we" does not mean RJR

Reynolds?
A. I've seen no document that wrote back to these people.
Q. Thank you.
And this says, "We are basically in the nicotine business." Doesn't it?
A. We are not in the nicotine business.
MR. CIRESI: Move to strike, non-responsive.
THE COURT: It is non-responsive. Please listen to the question.
Q. This document says, "We are basically in the nicotine business;" doesn't it, sir?
A. This document says that.
Q. Just like Dr. Teague said you were a specialized segment of the pharmaceutical business, in the business of delivering nicotine; correct?
A. Dr. Teague said that.
Q. And the author of this document said, "It is the best -- It is in the best long term interest for RJR to be able to control and effectively utilize every pound of nicotine we purchase. Effective control of nicotine in our products should equate to a significant product performance and cost advantage." Correct?

A. That's what this document says.
Q. And when you were seeking immunity in Congress in accordance with a proposed settlement, you wanted to control how the FDA would control nicotine; didn't you?
MR. WEBER: Let me object to the immunity, again, Your Honor. It's just a mischaracterization.
THE COURT: No. You may answer the question, if you understand it.
A. I don't understand it.
Q. You just don't understand; is that right?
A. We're going from a document here to the Congress to the FDA, and I'm having a little trouble, frankly, Mr. Ciresi, understanding the connections between all these points.
Q. In the proposed settlement, are there provisions that would attempt to curtail the FDA's right to control nicotine? "Yes" or "no."
A. I think the settlement tries to prevent the -- you know, through FDA control, or addressed the issue of banning the product.
Q. I'm asking about nicotine, sir.
A. I -- I do not know what the specific areas relative to nicotine are in the proposed settlement resolution that's in Washington.

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Q. Now since the 1970s, has RJR been researching threshold levels of nicotine?
A. I do not have any knowledge of research going on in the company about threshold levels of nicotine.
Q. Can you direct your attention to Exhibit 12777, volume one.
A. Is that 12 --
Q. 777.
A. 777. Okay. I got it.
Q. Do you have it, sir?
A. Yes, sir.
Q. Now the date of this is March 24th, 1971?
A. Yes, it is.
Q. From A. H. Laurene; correct?
A. Yes.
Q. Do you know who that is?
A. That would be Andy Laurene, Dr. Laurene, who used to work in R&D.
Q. RJR employee?
A. Yes.
Q. Carries on his duties as an RJR employee; correct?
A. When he worked for the company he did, yes.
Q. And he's writing to Dr. Murray Senkus; correct?
A. Yes, he is.

Q. "Re: Possible IBT Projects;" correct?
A. That's what it says.
Q. Do you know what an IBT project was?
A. No, I don't.
Q. And you see he's stating that "As a result of discussions with Dr. Teague and with Section Heads" --
Do you know what a section head is?
A. Somebody that's over a section of R&D.
Q. -- "the following are suggested as possible IBT undertakings."
A. Yes.
Q. "1. pH in mouth...;" correct?
A. That's what it says.
Q. "2. Absorption of nicotine in mouth versus lungs...;" correct?
A. Yes, that's what it says.
Q. "3. Difference in nicotine impact from free nicotine and bound nicotine" -- correct?
A. Yes. That's what it says.
Q. -- "effect of pH of smoke" -- correct?
A. Yes.
Q. -- "(blood levels, urine levels, smoking tests)." Correct?
A. Yes.

Q. Have you ever seen this document before?
A. I don't remember.

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Q. Well --
A. I may -- I may have seen it. I mean I --
Q. Let me see if I can refresh your recollection. Number four, "Habituating level of nicotine (How low can we go?)" Do you remember that?
A. So many documents. I think I do. I'm not totally 100 percent sure.
Q. Well do you think this refers to the threshold level of nicotine, "How low can we go?"
A. Sounds that way.
Q. Can you direct your attention to Exhibit 12270.
A. Yes. I'm there.
Q. This is one dated September 21, 1976; correct?
A. Yes, it is.
Q. "Subject: Product Characterization Definitions and Implications;" correct?
A. Yes.
Q. To Mr. A. P. Ritchy; correct?
A. Yes.
Q. From John L. McKenzie; correct?
A. Yes.
Q. Do you know those two individuals?
A. I know John McKenzie. I don't know A. P.

Ritchy.
Q. What was Mr. McKenzie's position?
A. In '76, I think he was probably working in the product development area, research and development. I think.
Q. Good employee?
A. Yeah. John was a good guy.
Q. Carrying on his duties --
A. Sure.
Q. -- on behalf of the company?
A. Yes.
Q. He defines nicotine; doesn't he?
A. Are you talking about in the document here?
Q. "Definition -- Definition of Terms."
A. "Definition of Terms." Okay.
Yes, he has a definition here for nicotine.
Q. "Nicotine is the pharmacologically active alkaloid ingredient in tobacco smoke." Correct?
A. That's what he says.
Q. And is another alkaloid cocaine?
A. I'm not a chemist.
Q. If you know.
A. I don't know if -- I don't know if cocaine is an alkaloid.
Q. Do you know what an alkaloid is?

A. Not in the scientific sense, no.
Q. Okay. Do you know if alkaloids are pharmacologically active?
A. I -- I'm not a chemist. I don't --
You're asking me about scientific terms of alkaloids, and I'm telling you I can't competently define those for you.

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Q. Do you know if nicotine is pharmacologically active? If you don't know, say so.
A. Oh -- oh, yes, our scientists have done research that there's a mild pharmacological effect to nicotine.
Q. So it is pharmacologically active; correct?
A. According to scientific work that some of our folks have done, they say it has a mild pharmacological effect.
Q. And "pharmacological" means a drug effect; correct?
A. I suppose, but not like cocaine or heroin.
Q. Well you just said you don't know if cocaine is even an alkaloid.
A. Well --
Q. Isn't that right?
A. You were drawing the parallel.
Q. Well the Surgeon General of the United States

drew the parallel; did he not, sir?
A. That cigarettes are like heroin and cocaine?
Q. They're like cocaine.
A. Perhaps he did. I don't see that parallel. I'm a smoker; I don't feel like a cocaine addict.
Q. Well, do you know if the Surgeon General stated that nicotine was like cocaine?
A. I am not sure that he did.
MR. CIRESI: May I approach, Your Honor?
Q. I'm going to show you the Surgeon General's report of 1988, sir. It's Exhibit 3820. And I'd like to direct your attention to this portion right here, "After carefully examining available evidence...." Could you read the three bullet points.
A. Yes. It says, "After carefully examining the available evidence, this report concludes that cigarettes and other forms of tobacco are addicting. Nicotine is the drug in tobacco that causes addiction. The pharmacological and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine."
Q. Thank you.
Now were you aware of that before, sir?

MR. CIRESI: May I approach, Your Honor?
A. I was not aware of it specifically in this document. No, I wasn't. I also don't agree with it.
MR. CIRESI: Move to strike the last comment.
THE COURT: Oh, we'll let it stand.
BY MR. CIRESI:
Q. Now can you turn to the second page of Mr. McKenzie's document, and do you see there where he's referencing nicotine?
A. Yes.
Q. "Nicotine: The psychopharmacological agent in

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tobacco which is one of the key factors in satisfaction is nicotine. Although the issue is not decided, current theory advocates that a smoker will consume enough cigarettes to reach his satisfaction level. However, should the nicotine be too low, the smoker will become fatigued with smoking before achieving satiation. On the other hand, too much nicotine in the smoke will make the product so strong that the consumer is unable to enjoy the product. Typical nicotine in smoke values for cigarettes range from 0.2 milligrams to 1.8 milligrams per cigarette." Do you see that?

A. Yes, I do.

Q. Now are you aware, sir, that Philip -- or excuse me, that RJR studied and investigated the threshold levels and dose levels of nicotine?

A. I saw a document that you took a piece out of with Andy Laurene talking about how low can you go, and I do not have any specific knowledge of specific research that was against the project of how low can you go or threshold levels. And this statement here from John McKenzie talks about "current theory advocates that a smoker," and it's a theory. I do not know if research was done. I know there was research back in this time around pH and ammonia and free nicotine, and we use ammonia for taste in the product today, and so --

Q. Is your answer no?

A. I do not know of research on threshold levels.

Q. Okay. Now you would agree that, at least in this memorandum, Mr. McKenzie was talking about a threshold and an upper level; correct?

A. It says typical nicotine in smoke values for cigarettes range from .2 to 1.2. He simply, I think, is just talking about the range of nicotine in various types of cigarettes.

Q. And he's talking about the effect of pH as it relates to the immediacy of the nicotine impact;

correct?

A. Where is the pH?

Q. Starts right --

A. Oh, below that.

Q. You see it?

A. Yes.

Q. Before we go down there, let's talk about the tar. He points out that the smoke tar contains the majority of flavorant materials responsible for the taste of cigarette smoke; doesn't he?

A. Yes.

Q. And you agree with that; don't you?

A. Yes. But I think nicotine, relative to taste, contains impact in the mouth, sort of like carbonation in soda.

Q. Nicotine is an alkaloid. It's foul and rotten, tastes like rubber; doesn't it?

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A. If you smoke too much. But it has a taste impact in the mouth, it has a stimulant/irritant effect. Best analogy would be like carbonation in a -- in a Coke.
Q. It's like carbonation in a Coke; is that what you said?
A. I'm talking about the similar effect in terms of mouth irritation as it relates to the taste and

impact of cigarettes, nicotine plays that role.
Q. How many deaths have been reported by the Surgeon General to be attributable to Coca-Cola?
MR. WEBER: Objection, Your Honor, it's argumentative.
THE COURT: You may answer that.
A. None that I know of.
Q. If we look at pH, then, sir, it talks about the range for cigarette smoke is typically from 5.5 to 7.0; correct?
A. Yes, that's what it says.
Q. And then down below do you see where it talks about the pH relates to the immediacy of the nicotine impact?
A. That's what's being stated here.
Q. It says, "As the pH increases, the nicotine changes its chemical form so that it is more rapidly absorbed by the body and more quickly gives a kick to the smoker."
A. That's the theory that seems to be in here, yes.
Q. Not theorizing. He doesn't say "if," he doesn't say "maybe." It says, "The pH also relates to the immediacy of the nicotine impact," doesn't he?
A. This could be a theory. I don't know what research, you know, is done to -- for John -- we're

still on John McKenzie -- to conclude this.
Q. Have you ever seen this document before?
A. I don't -- I don't think so.
Q. It says, "If the pH becomes too high, the smoke cannot be inhaled as is the case with cigar smoke." Do you see that?
A. Yes.
Q. And if you go over to the next page, it talks about the cigarette being a complex chemical reaction chamber; correct?
A. Yes.
Q. For the generation of an aerosol containing flavoring materials and nicotine; correct?
A. Yes.
Q. So it talks about flavoring materials on the one hand, and nicotine on the other; doesn't it?
A. Yes.
Q. And it states that "The variables affecting the smoke constituents are highly interdependent and smoker satisfaction is best maintained by a controlled balance of many factors." Do you see that?

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A. Yes, that's what he says here.
Q. What he's saying is that they want to give a pharmacological effect in a palatable form; isn't

that right?
MR. WEBER: Objection, Your Honor, calls for speculation as to what someone else means.
THE COURT: Okay. Well you can answer it if you know.
A. I have no idea if that's what John McKenzie meant in 1976 when he wrote this.
Q. Can you go to Exhibit 12673.
A. Yes, I'm there.
Q. This is another RJR memorandum; correct?
A. Yes, it is.
Q. Involving nicotine research; correct?
A. Yes.
Q. And it's from W. M. Henley. Do you know who he is?
A. No, I don't.
Q. Do you know who Dr. D. H. Piehl is?
A. Yes, that's Don Piehl. He was one of the top people in the R&D.
Q. Top people in your days?
A. Yeah. I --
Yes. Back in '76 he was, yes. He wasn't the head of R&D, he was one of the senior researchers in R&D.
Q. Good researcher; correct?

A. Yeah, Don is a good guy.
Q. Employee of the company?
A. He worked in R&D. He's a good guy. He's an employee of Reynolds. I knew him. He's a great guy.
Q. Carried on his duties and responsibilities; correct?
A. Yes.
Q. And there was an October 25th, 1976 discussion of nicotine that's referenced here; correct?
A. Yes, that's in the first sentence.
Q. And the primary goals of that discussion were to review RJR's current knowledge concerning nicotine; correct?
A. Yes.
Q. And to discuss particular research needs in terms of problems to be solved and questions to be answered; correct?
A. Yes.
Q. And to establish among staff personnel a firmer base for stimulation, dialogue and cross-fertilization of ideas in the area; correct?
A. Yes.
Q. And then there is listed the principal participants and their topics; correct?
A. Yes.

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Q. And those are all people in the research and development department; correct?
A. Yes.
Q. And you see other participants were Dr. Rodgman; correct?
A. Yes.
Q. Dr. Rowland?
A. I don't know the name -- R. L. Rowland.
Q. Do you know Mr. Roberts?
A. I don't remember that name, no.
Q. Do you see the other people there? Any of those you know, besides Mr. Henley?
A. Ah --
Q. You don't know Mr. Henley, I guess.
A. C. R. Green I believe, R. A. Lloyd, M. E. Stowe. I think that's it.
Q. Those are all people in the research and development department of RJR; correct, sir?
A. Yes.
Q. And the first presentation was on the physiological action of nicotine; correct?
A. Yes. That's what's here.
Q. And the site of the action shows that it's in the brain at the cholinoceptive receptors; correct?
A. That's what it says.

Q. And if you go on to the next page, you'll see that it states that "The body functions which are controlled by cholinergic nerves that are mostly parts of the autonomic nerve system." Your central nervous system; isn't that right?
A. You got me.
Q. You just don't know.
A. I don't know.
Q. Do you see the presentation on "Absorption, Metabolism and Excretion?"
A. Yes.
Q. And it says, "...the most effective method of administering nicotine to the body is by inhalation of cigarette smoke;" correct?
A. That's what it says.
Q. And it talks about unionized nicotine is readily soluble in both hydrophilic and lipophilic solvents. Do you see that?
A. Yes.
Q. Do you know what that means?
A. Absolutely not.
Q. And if you follow that paragraph down a little bit, sir, --
A. To where?
Q. Do you see -- do you see where it says, "Thus a

high concentration of nicotine is suddenly produced in the pulmonary veins, which is then distributed to the brain and many parts of the body within a few

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seconds?" Do you see that?
A. Yes.
Q. And "Efforts to reproduce this concentration of blood nicotine by intravenous injection usually require about twice the amount of nicotine injected versus inhaled to produce a given physiological response." Do you see that?
A. Yes.
Q. And this is referring to tests that had been conducted; correct?
A. It sounds that way.
Q. Were you aware of this action of nicotine on the body?
A. I have -- I have no ability whatsoever to comment on this. I know -- I'm totally without technical skill here in terms of this -- these sentences and this apparent or possible research.
Q. Okay. So you really don't know anything about this. Fair statement?
A. About this?
Q. Yes.
A. No, I don't. I'm not a scientist.

Q. Can you go on to the next page, and you see down there the "Taste of Nicotine?"
A. Yes.
Q. And it says "Some Taste (foul, rotten rubber)." Do you see that?
A. Yeah.
Q. That's what nicotine tastes like; doesn't it?
A. It says irritation, strong tongue sting and throat grab. That's sort of what I was referring to earlier.
Q. And foul, rotten rubber; correct?
A. Yeah, that's -- it says that here.
Q. And that's at a concentration of 10 to the four molar; correct?
A. And I have no idea what that means.
Q. Now do you know if nicotine is poisonous?
A. I imagine it could be if you took enough of it.
Q. Do you know if it's --
A. A lot of things can be poisonous if you take enough of it.
Q. Do you know if it's fatal at 40 milligrams?
A. I have no idea.
Q. Do you know how many milligrams of nicotine is in a cigarette?
A. Well it ranges from up in the, you know, one

point three or four, down to .05.
Q. Can you direct your attention, sir, to Exhibit 12505.
A. Yes, I'm there.
Q. This is a memo of September 8th, 1980; correct?
A. Yes, it is.
Q. It's to Dr. Roy E. Morse; correct?
A. Yes.

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Q. VP of research and development?
A. Yes, he was.
Q. From Dr. Alan Rodgman; correct?
A. Yes.
Q. We saw him on one of the other memos; correct?
A. Seen him before. Frankly, I can't remember if I've seen him on a memo today.
Q. Don't you remember seeing him as one of the other participants at that conference --
A. Oh.
Q. -- in the preceding memo?
A. On the distribution list, yeah.
Q. As a participant at a proceeding. Do you remember that?
A. Right. That whole list of -- yes.
Q. Okay. Can you go to the first page of this.
A. I'm there.

Q. And it's talking about the development of nicotine technology there; correct?
A. I'm not there.
Yes.
Q. And Dr. Rodgman here is referring to his July 22nd memorandum which assumed the reader was familiar with Philip Morris's and RJR's past activities in developing nicotine technology; correct?
A. Yes, that's what it says.
Q. And then he puts the information in that memo in perspective by providing a background; correct?
A. Yes.
Q. And he talks about the development of nicotine technology involving a host of factors; correct?
A. Absolutely, that's what it says.
Q. One of those is nicotine satisfaction; correct?
A. Yes.
Q. And nicotine satisfaction was dependent on puff count. What's puff count, sir?
A. The number of puffs you get from a cigarette.
Q. Puff volume, what would puff volume be?
A. Well I guess he's talking about the amount of smoke you get per puff.
Q. How deeply you inhale; right?
A. Well he's talking about puff; you know, that's

the drag on the cigarette. I'm not sure if he's talking about how deeply you inhale. It's --
Q. Well if you --
A. -- talking about puff, puff on a cigarette. He's talking about the number of puffs, and I believe he's talking about the amount of smoke you would get on -- per puff.
Q. And if you take a deeper drag, you get a greater volume per puff; correct?
A. If you take a deeper drag, and --
Yes. If you inhale stronger with your mouth, if you suck harder on the cigarette, you will get more smoke.

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Q. And that's what he's talking about with regard to puff volume; correct?
A. I -- I would assume that's what Dr. Rodgman was talking about in 1980 when he wrote this.
Q. And it's also related to -- and by "it" I mean nicotine satisfaction -- is also related to the total nicotine delivery; correct?
A. Are we in the same -- nicotine --
Q. Right there, nicotine satisfaction.
A. Oh, yes. Okay.
Q. Do you see that?
A. Yes.

Q. And the nicotine delivery per puff; correct?
A. Yes.
Q. Plus free nicotine per puff; correct?
A. Yes.
Q. And if you go down below, he's got a footnote there, a; correct?
A. Yes.
Q. And if we go down below, we see this, "Most, if not all, nicotine in tobacco is present as a salt, the reaction product of nicotine and an acid, generally referred to as 'bound' nicotine;" --
A. Yes.
Q. -- "most of the nicotine in smoke is present as a salt or 'bound' form" --
A. Right.
Q. -- "and a small fraction is present as 'free' nicotine."
A. Right.
Q. "The 'free' nicotine -- The percentage 'free' nicotine depends on the smoke pH." See that?
A. Yes.
Q. Then he states, "'Free' nicotine is absorbed more rapidly by the smoker than is 'bound' nicotine." Correct?
A. That's what it says.

Q. And that's talking about being absorbed in the lung; correct, sir?
A. I'm not sure about that.
Q. The alveoli?
A. Pardon me?
Q. Are you familiar with the epithelial lining of the lung?
A. Nope.
Q. Don't know anything about that.
A. I have a master's in business, and not a Ph.D. in medical science.
Q. And at this time was -- well strike that.
Now do you know if any of these documents regarding nicotine were provided to the FDA by RJR?
A. I have no idea.
Q. Do you know if they were ever provided to the Surgeon General?
A. I have no idea.

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Q. Do you know if they were ever made public?
A. I -- I don't -- I have no idea.
Q. Do you know if they were made public last Friday?
A. There were some documents that were put on the Internet last Friday. Some of these documents may be in there, but I do not know specifically if these

documents were in those documents.
Q. You know that the documents from the Minnesota litigation were put on the Internet last Friday; do you not, sir?
A. Yes.
Q. And you know this document was produced in the Minnesota litigation; do you not?
A. Well I know it was produced. It's obviously here in Minnesota.
Q. And when they were put on the Internet, that's the first time they were made public; correct, sir?
A. I would guess it's the first time for some of these. Documents have been out for a long time. I have no idea which ones are in cases. I don't even -- no idea which ones are unique to Minnesota, which ones for another case, which ones are redundant. Got zillions of documents out there.
Q. Well do you know that all the other states requested the Minnesota select documents?
MR. WEBER: Objection, Your Honor. It's irrelevant, it's irrelevant to the issues before this court.
THE COURT: No, you may answer that.
A. No.
Q. Nobody's told you that.

A. They may have and I may have forgotten. It's --
Q. And you certainly have not reviewed all of the documents that went on the Internet; have you?
A. No, I haven't.
Q. So you don't know if any of those documents were ever made public before they went on the Internet last Friday; do you?
A. I have no idea.
THE COURT: Counsel.
MR. CIRESI: I'm sorry, Your Honor. This is a good place to break I guess.
THE COURT: Why don't we recess. We'll reconvene tomorrow morning at 9:30.
THE CLERK: Court stands in recess, to reconvene tomorrow morning at 9:30.
(Recess taken.)

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